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STAFF DRAFT
SUBJECT TO REVISION

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STATE DOCUMENTS

PROPOSED LOCAL GOVERNMENT CODE
Title 47A, R.C.M., 1947

PUBLIC HEARINGS WILL BE HELD DURING
MAY AND JUNE

THE COMMISSION WILL REVISE AND
TENTATIVELY ADOPT THE CODE IN AUGUST

PUBLIC HEARINGS WILL BE HELD IN
SEPTEMBER AND THE COMMISSION WILL ADOPT
THE CODE IN THE VERSION TO BE PRESENTED
TO THE LEGISLATURE

Staff Report
To The
Commission on Local Government

Staff Report No. 10

April 28, 1976



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COMMISSION ON LOCAL GOVERNMENT

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Dale A. Harris
Director

April 28, 1976

CITIZENS, LOCAL GOVERNMENT OFFICIALS, LEGISLATORS:

This Staff Draft has been prepared for Public Hearings during the spring of 1976. Following the spring public hearings the State Commission on Local Government will consider testimony received at the hearings, discuss and amend the staff draft, and give tentative approval to a Commission draft that will be submitted to a second set of hearings in September.

Citizens, local officials and employees and legislators are encouraged to participate in both sets of hearings. The spring hearings are scheduled as follows:

May 25 -- Butte	Butte Community Center, Multi-Purpose Room, 25 West Front
May 26 -- Great Falls	Civic Center, Council Chambers
May 27 -- Missoula	Sentinel High School, Little Theatre
June 2 -- Billings	Eastern Montana College, Library 148
June 3 -- Miles City	Miles Community College, Room 106-107
June 4 -- Wolf Point	The Sherman Inn, Red Lantern Room
June 9 -- Helena	Highway Department Auditorium

HEARINGS BEGIN AT 7:00 P. M.

The Commission would appreciate receiving a written copy of testimony presented at the public hearings and invites all interested persons to send written comments and questions to the Commission office.



This draft supersedes the Preliminary Staff Draft dated January 22, 1976. The staff draft has been reviewed and discussed but not adopted by the State Commission. This draft of the proposed local government code is complete except for eight parts of Chapter 6, SERVICES. These parts will be included in the draft submitted to hearings in September.

State and local officials have long realized that local governments need more freedom if they are to meet the needs of their citizens. The new Montana Constitution now provides for such freedom, but its provisions must be carefully implemented. This Staff Draft of the new local government code is intended to replace the present tangle of confusing, conflicting, and unnecessarily complex local government laws with a new set of laws that will give local governments the authority to deal effectively with their problems.

The new Montana Constitution and a new code of local government laws will permit local governments to be partners--not step-children--of the state.

It is the state's responsibility--specifically the legislature's responsibility--to adopt new laws to implement the local government article of the new constitution and permit effective local government.

The 1974 legislature created the State Commission on Local Government to study and recommend necessary and desirable changes to the 1975 and 1977 legislative sessions. The Act creating the Commission provides:

The Commission shall make a detailed and thorough study of local government structure, powers, services, finance and state-local relations. The Commission shall prepare a revised code of local government law based on its studies and may make other recommendations for the improvement of local government.

The staff of the State Commission on Local Government respectfully submits to the citizens, local government officials, and legislators this staff draft of the new local government code.

I deeply appreciate the contributions of staff members involved in the drafting, typing, and proofing that was necessary to produce this staff draft of the Code. Every member of the staff contributed to this effort. Special credit is deserved by Mike Sehestedt, former Chief Attorney,

Clyde Peterson, Attorney, Dave Wanzenried, Deputy Director, and Steve Turkiewicz, Finance Project Coordinator, for their careful drafting of the new code. The process of drafting, correcting, and revising preliminary drafts was facilitated by the expert typing of Merrylee Zins, Josephine Lahti, Mary Lee Williams, Joyce Moore, Linda Stapleton, Jeanne Paquin, and Colleen Griffin. Editing by Susan Cole, Administrative Assistant, and Arnold Malina, Public Information Officer, greatly improved the style, grammar, and consistency of the code.

The State Commission Staff is grateful for the response of local government officials and employees to our inquiries regarding problems created by existing state law and their suggestions for improvements. The review and comments on earlier staff drafts by local officials have been especially helpful. We especially appreciate the thoughtful and useful reviews by Dean Zinnecker, Executive Director of the Montana Association of Counties; Dan Mizner, Executive Director of the Montana League of Cities and Towns; George H. Pendergast, Administrator of the Local Government Services Division of the Department of Community Affairs; Chuck Painter, Missoula County Director of Administrative Services; Al Thelen, City Manager of Helena; Dick Thomas, City Manager of Great Falls; and the members of their staffs.

Since January the Staff has met, explained, and discussed the initial staff draft of the proposed code with thirty-five different groups of local officials, including the Executive Boards of the Montana Association of Counties and League of Cities and Towns, the Executive Board of the Montana Association of Elected County Officials, and the Governor's Advisory Council on Local Government. This draft of the code has been greatly improved by suggestions made by local officials at these meetings. The Staff greatly appreciates the assistance of these organizations.

The Staff also appreciates the formation of two Task Forces by the Montana Association of Counties and their cooperation in carefully reviewing and commenting on the initial draft of the proposed code. We are looking forward to working with similar Task Forces being created by the League of Cities and Towns.

The Staff is looking forward to working with the Commission, citizens, and state and local officials to improve and refine the proposed code.

DALE A. HARRIS
STAFF DIRECTOR



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TABLE OF CONTENTS

	<u>page</u>
LETTER TO CITIZENS, LOCAL GOVERNMENT OFFICIALS, LEGISLATORS	iii
PREFACE.	1
INTRODUCTION.	1
SCHEDULE FOR REVIEW	1
AUTHORITY	2
PRINCIPLES.	2
MAJOR RECOMMENDATIONS	3
TITLE 47A AND SELF-GOVERNMENT POWERS	5
SERVICE LAWS.	7
READING THE PROPOSED CODE	8
REVIEW AND COMMENT.	9
SUMMARY OF LOCAL GOVERNMENT CODE	11
PROPOSED LOCAL GOVERNMENT CODE	19
OUTLINE OF LOCAL GOVERNMENT CODE	21
CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS	23
PART 1. GENERAL PROVISIONS	25
TITLE	25
GENERAL PURPOSE OF TITLE	25
LIBERAL CONSTRUCTION	25
POWERS VESTED IN GOVERNING BODY	25
PRIOR RIGHTS AND OBLIGATIONS	25
TITLE CONTROLS	25
TITLE TO BE CONSTRUED AS A WHOLE	25
SEVERABILITY	25
STATE TECHNICAL ASSISTANCE	26
PENALTY	26
PART 2. DEFINITIONS AND CONSTRUCTION	27
GENERAL CONSTRUCTION	27
GENERAL DEFINITIONS	27
PART 3. PROVISIONS COMMON TO ALL FORMS OF LOCAL GOVERNMENT	33
ADMINISTRATIVE RULES	33
PUBLISH	33
NOTICE	33
MAIL NOTICE	33
PETITION	34
PUBLIC HEARING	34
PROTEST	35

SIGNATURES	35
RIGHTS ON BEHALF OF GOVERNMENT OR CORPORATION	36
POSTING	36
OATHS AND MARRIAGES	36
RULES	36
 PART 4. PUBLIC MEETINGS, RECORDS, AND REPORTS	 37
PURPOSE	37
PUBLIC MEETING REQUIRED	37
EXCEPTIONS	37
PARTICIPATION	37
PUBLIC RECORDS	37
DESTRUCTION OF OLD RECORDS	38
STATE REPORTS	38
REPORTS OF DEPARTMENTS, BOARDS, AUTHORITIES	38
 CHAPTER 2. LOCAL GOVERNMENT FORMATION	 39
PART 1. INCORPORATION AND DISINCORPORATION OF MUNICIPALITIES	 41
AREAS WHICH MAY INCORPORATE	41
PETITION FOR INCORPORATION	41
ELECTION OF INCORPORATION	41
ELECTION OF OFFICERS FOLLOWING INCORPORATION	41
METHODS OF DISINCORPORATION	42
AUTOMATIC DISINCORPORATION	42
DISINCORPORATION BY ELECTION	42
FINANCIAL CONDITION OF MUNICIPALITY	43
TRANSFER OF PUBLIC PROPERTY AND POLICE COURT RECORDS	43
PAYMENT OF DEBTS AND COLLECTIONS OF RECEIVABLES OF MUNICIPALITY	43
TAX LEVY IN THE EVENT OF INSOLVENCY	44
SURPLUS ASSETS DEPOSITED TO SPECIAL FUND	44
COLLECTION OF AMOUNTS DUE TO MUNICIPALITY	44
STATE AID	44
 PART 2. ANNEXATION	 47
POLICY AND PURPOSE	47
GENERAL DEFINITIONS	47
JUDICIAL REVIEW	48
ANNEXATION RECORDED	49
ANNEXATION BY ACCEPTANCE OF FINAL PLAT	49
ANNEXATION OF WHOLLY SURROUNDED AREA	50
EXTENSION OF BOUNDARIES TO INCLUDE CERTAIN AREAS	50
INITIATION OF EXTENSION OF CORPORATE LIMITS	51
PLANS TO PROVIDE SERVICES	51
STANDARDS TO BE MET BEFORE ANNEXATION CAN OCCUR	52
RESOLUTION OF INTENTION TO ANNEX -- PUBLIC HEARING NOTICE -- ACTION BY GOVERNING BODY AFTER HEARING	53
ANNEXATION ORDER	54
 PART 3. COUNTY BOUNDARIES AND COUNTY SEATS	 55
COUNTY BOUNDARIES	55
INITIATION OF BOUNDARY ALTERATION OR CHANGE IN COUNTY SEAT	55
ELECTION	56

EFFECT OF APPROVAL -- PUBLIC PROPERTY	56
EFFECT OF TRANSFER -- TIME	56
PART 4. CONSOLIDATION, CONFEDERATION AND MERGER	59
METHODS OF CONSOLIDATION, CONFEDERATION, AND MERGER	59
EFFECT OF CONSOLIDATION	59
EFFECT OF CONFEDERATION	59
EFFECT OF COUNTY MERGER	59
CHAPTER 3. LOCAL GOVERNMENT STRUCTURE AND ORGANIZATION	61
PART 1. REVIEW, AMENDMENT AND ADOPTION OF LOCAL GOVERNMENT FORM	63
AMENDMENT OF FORM OR CHARTER	63
STUDY COMMISSIONS	64
ELECTION OF MEMBERS	64
TIMETABLE FOR ELECTIONS	65
ORGANIZATION OF THE STUDY COMMISSION	65
ADMINISTRATIVE POWERS	66
FINANCIAL ADMINISTRATION	67
SCOPE OF STUDY COMMISSION'S RECOMMENDATIONS	67
FINAL REPORT	68
STUDY COMMISSION TIMETABLE	70
VOTE ON ALTERNATIVE FORM	71
GENERAL TRANSITION	72
TRANSITION -- OFFICERS AND EMPLOYEES	74
ELECTION OF NEW OFFICIALS	74
ORGANIZATION OF THE GOVERNING BODY	74
JUDICIAL REVIEW	74
PART 2. ALTERNATIVE FORMS OF LOCAL GOVERNMENT	75
DECLARATION OF PURPOSE	75
ADOPTION OF ALTERNATIVE FORMS	75
COMMISSION-EXECUTIVE FORM	76
COMMISSION-MANAGER FORM	79
COMMISSION FORM	82
COMMISSION-CHAIRMAN FORM	87
TOWN MEETING FORM	90
CHARTER FORM	93
PART 3. LEGISLATIVE ORGANIZATION AND PROCEDURE	95
GENERAL POWER	95
PUBLIC PARTICIPATION	95
COMPOSITION, QUALIFICATION, AND VACANCIES	95
PROCEDURE	96
CLERK AND STAFF	97
MOTIONS	97
ORDINANCE REQUIREMENTS	97
ADOPTION AND AMENDMENT OR CODES BY REFERENCE	98
PENALTY FOR VOILATION OF ORDINANCE	99
RESOLUTION REQUIREMENTS	99

INTERLOCAL AGREEMENTS	99
FRANCHISES	101
INITIATIVE AND REFERENDUM	102
LEGISLATIVE ORGANIZATION AND PROCEDURE FOR TOWN MEETING	103
 PART 4. DEPARTMENTS, OFFICES, AUTHORITIES, BOARDS, SUBORDINATE SERVICE DISTRICTS AND LOCAL IMPROVE- MENT DISTRICTS	105
OFFICE OF THE CHIEF EXECUTIVE	105
CREATION OF DEPARTMENTS	105
DIRECTION OF DEPARTMENTS	106
BOARDS	106
APPOINTMENT OF YOUTH TO BOARDS	108
OFFICERS OF LOCAL GOVERNMENT	108
VACANCY IN OFFICE	108
SUSPENSION	109
RESIGNATION	109
CONSOLIDATION OF OFFICES	109
CIVIL ATTORNEY	110
AUTHORITIES	110
REORGANIZATION OF DEPARTMENTS AND BOARDS	111
TRANSITION TO NEW PLAN OF GOVERNMENT	111
REORGANIZATION OF EXISTING DISTRICTS	111
TRANSITION OF EXISTING BOARDS	112
SUBORDINATE SERVICE DISTRICTS	113
ESTABLISHMENT OF SUBORDINATE SERVICE DISTRICT	114
MODIFICATION OF THE DISTRICT	115
ABOLITION OF A DISTRICT.	116
DISTRICT BOUNDARIES.	116
PHASED IMPLEMENTATION	116
ANNEXATION BY A MUNICIPALITY	117
JOINT SUBORDINATE SERVICE DISTRICTS	117
ADMINISTRATION OF SUBORDINATE SERVICE DISTRICTS	117
JOINT SERVICE AND LOCAL IMPROVEMENT DISTRICTS	118
LOCAL IMPROVEMENT DISTRICTS	118
OBJECTIONS AND REVISIONS	120
PERFORMANCE OF WORK	121
PAYMENT OF CONTRACTS	121
ASSESSMENT ROLL	121
REASSESSMENT	123
OBJECT AND APPEAL	123
PAYMENT	124
DELINQUENT SPECIAL ASSESSMENTS MAY BE REINSTATED	124
PAYMENT OF SPECIAL ASSESSMENTS UNDER PROTEST -- ACTION TO RECOVER	124
MISTAKES OR MISNOMERS NOT TO INVALIDATE SPECIAL ASSESSMENT	125
GOVERNMENT IN EMERGENCIES	125
 PART 5. ELECTIONS	127
GENERAL DEFINITIONS.	127
OFFICERS OF LOCAL GOVERNMENT	127
ELECTIONS REQUIRED	127

QUALIFICATION OF LOCAL GOVERNMENT OFFICIAL	128
QUALIFICATIONS OF LOCAL GOVERNMENT ELECTORS	128
PRECINCTS -- DISTRICTS -- POLLING PLACES	129
PARTISAN NOMINATION	129
ELECTION PROCEDURES FOR PARTISAN PRIMARY AND PARTISAN GENERAL ELECTIONS	129
NONPARTISAN NOMINATION	130
NONPARTISAN PRIMARY BALLOT AND ELECTION	130
NONPARTISAN GENERAL ELECTIONS	130
ELECTION PROCEDURES FOR QUESTIONS SUBMITTED TO THE ELECTORS	130
BOND ELECTION PROCEDURES	131
ELECTIONS ON QUESTIONS SUBMITTED TO ELECTORS WITHIN A DISTRICT	132
RECALL	132
ELECTIONS FOR ADMINISTRATIVE BOARDS AND COMMUNITY COUNCILS	132
CHAPTER 4. ADMINISTRATIVE PROVISIONS	135
PART 1. PERSONNEL	137
EMPLOYMENT	137
NEPOTISM PROHIBITED	137
POLITICAL ACTIVITY	137
COLLECTIVE BARGAINING	138
HOURS OF LABOR	138
OFFICE HOURS	138
CIVIL SERVICE BOARD	138
COMPOSITION OF CIVIL SERVICE BOARD -- TERM OF OFFICE -- QUALIFICATIONS	138
DUTIES OF CIVIL SERVICE BOARD	139
DEMOTION, SUSPENSION, OR DISCHARGE	139
PROBATIONARY PERIOD	140
PART 2. WAGES, EXPENSES, AND BENEFITS	141
SALARIES	141
PER DIEM, MILEAGE, ACTUAL TRANSPORTATION EXPENSES	141
ANNUAL VACATION, SICK, AND OTHER LEAVES OF ABSENCE	141
HOLIDAYS	141
SOCIAL SECURITY	141
WORKER'S COMPENSATION	141
UNEMPLOYMENT COMPENSATION	142
PUBLIC PENSIONS	142
GROUP INSURANCE	142
DEFERRED COMPENSATION PROGRAM	142
MEMBERSHIP IN ORGANIZATIONS	143
PART 3. OFFICIAL BONDS	145
PURCHASE OF SURETY BONDS BY LOCAL GOVERNMENT GOVERNING BODY	145
BONDING OF ELECTED OR APPOINTED LOCAL GOVERNMENT OFFICERS AND EMPLOYEES -- AMOUNT OF BOND -- SOLICITING OF OFFERS	145
PREMIUMS -- CHARGE AGAINST APPROPRIATIONS.	145
APPROVAL OF BOND BY LOCAL GOVERNMENT LEGAL OFFICE -- FILING	145

COMPANIES PERMITTED TO EXECUTE BONDS . . . . .	.145
CONDITIONS -- SIGNATURES AND SURETIES . . . . .	.145
DETERMINATION OF ADEQUACY OF BOND BY DEPARTMENT OF COMMUNITY AFFAIRS . . . . .	.146
PART 4. ETHICS . . . . .	.147
PUBLIC TRUST . . . . .	.147
RULES OF CONDUCT . . . . .	.147
ETHICAL PRINCIPLES FOR ALL PUBLIC OFFICERS AND EMPLOYEES . . . . .	.148
REMOVAL FROM OFFICE . . . . .	.148
CHAPTER 5. POWERS OF GENERAL POWER LOCAL GOVERNMENTS . . .	.149
PART 1. GENERAL GOVERNMENT POWERS . . . . .	.151
LOCAL GOVERNMENT A CORPORATE BODY . . . . .	.151
DISTRIBUTION OF POWERS . . . . .	.151
LEGISLATIVE POWERS . . . . .	.151
POWERS . . . . .	.151
CONCURRENT POWERS . . . . .	.153
LIMIT ON LIABILITY . . . . .	.153
CHAPTER 6. SERVICES OF GENERAL POWER LOCAL GOVERNMENTS . .	.155
PART 1. GENERAL SERVICE AUTHORIZATION . . . . .	.157
PURPOSE . . . . .	.157
METHODS FOR PROVIDING SERVICES AND FACILITIES . . .	.157
AUTHORIZED LOCAL GOVERNMENT SERVICES AND FACILITIES	.157
REGULATORY POWERS . . . . .	.159
FACILITIES INFERRED . . . . .	.161
REGULATORY POWERS INFERRED . . . . .	.161
PART 2. ESTABLISHMENT AND ALLOCATION OF SERVICES . . .	.163
POLICY AND PURPOSE . . . . .	.163
EXISTING SERVICES . . . . .	.163
ESTABLISHMENT OF JURISDICTION-WIDE SERVICES . . . .	.163
FINANCING JURISDICTION-WIDE SERVICES . . . . .	.164
ESTABLISHMENT OF SERVICES LESS THAN JURISDICTION-WIDE	.164
FINANCING SERVICES LESS THAN JURISDICTION-WIDE . . .	.164
SERVICE PLAN . . . . .	.164
COUNTY SERVICES . . . . .	.165
CONCURRENT SERVICES . . . . .	.165
COUNTY SERVICES IN MUNICIPAL LIMITS . . . . .	.165
TOTAL TRANSFER OF A SERVICE TO A COUNTY . . . . .	.166
MUNICIPAL PERFORMANCE OF COUNTY SERVICES . . . . .	.166
MUNICIPAL EXTRATERRITORIAL POWERS . . . . .	.166
EFFECTIVE DATE OF SERVICE CHANGES . . . . .	.167
ALLOCATION OF ASSETS AND LIABILITIES . . . . .	.167
OUTLINE OF CHAPTER 6, PART 3 THROUGH PART 10. . . . .	.169

CHAPTER 7. POWERS AND SERVICES OF SELF-GOVERNMENT LOCAL GOVERNMENTS . . . . .	.171
PART 1. POWERS OF SELF-GOVERNMENT LOCAL GOVERNMENTS. .	.173
SELF-GOVERNMENT POWERS . . . . .	.173
AUTHORIZATION FOR SELF-GOVERNMENT SERVICES AND FUNCTIONS . . . . .	.173
GENERAL POWER GOVERNMENT LIMITATIONS NOT APPLICABLE	.173
LEGISLATIVE POWER VESTED IN LEGISLATIVE BODIES . . .	.173
STATE LAW APPLICABLE . . . . .	.173
CONSTRUCTION OF SELF-GOVERNMENT POWERS . . . . .	.173
PART 2. LIMITATIONS ON SELF-GOVERNMENT LOCAL GOVERNMENTS . . . . .	.174
POWERS DENIED . . . . .	.174
POWERS REQUIRING DELEGATION . . . . .	.175
CONSISTENCY WITH STATE REGULATION REQUIRED . . . . .	.175
MANDATORY PROVISIONS . . . . .	.176
CHAPTER 8. DUTIES OF LOCAL GOVERNMENTS AS AGENTS OF THE STATE . . . . .	.177
PART 1. GENERAL PROVISIONS . . . . .	.179
PURPOSE . . . . .	.179
BY WHOM PERFORMED . . . . .	.179
PART 2. RECORDS . . . . .	.181
RECORDING . . . . .	.181
INDEXES . . . . .	.182
DUTY OF RECEIPT OF AN INSTRUMENT TO BE RECORDED . .	.183
MAKING OF SEARCHES . . . . .	.184
LIABILITY FOR NEGLECT OF DUTY . . . . .	.184
OFFICIAL RECORDS . . . . .	.185
PART 3. PUBLIC HEALTH . . . . .	.187
GENERAL DUTIES . . . . .	.187
REPORTS . . . . .	.187
BOARD OF HEALTH . . . . .	.187
PART 4. LAW ENFORCEMENT . . . . .	.189
LAW ENFORCEMENT ADMINISTRATOR . . . . .	.189
INQUESTS . . . . .	.189
PUBLIC PROSECUTOR . . . . .	.190
CLAIMS AGAINST PUBLIC PROSECUTOR'S OR CIVIL ATTORNEY'S OWN COUNTY . . . . .	.192
JAILS . . . . .	.192
WHO MAY BE DETAINED, EXPENSE OF PRISONERS, EXCEPTIONS	.193
PRISONERS . . . . .	.194
REMOVAL OF PRISONERS IN CASE OF FIRE OR PESTILENCE .	.194
CONTIGUOUS COUNTY JAIL -- WHEN USED -- PROCESS . . .	.195

PART 5. JUDICIAL	197
JUSTICE COURTS	197
DISTRICT COURT FACILITIES	197
CLERK OF DISTRICT COURT	197
JURORS	199
WITNESSES	200
COURT REPORTERS	200
INTERPRETERS	200
PUBLIC DEFENDERS	200
YOUTH PROBATION OFFICER	200
SERVICE OF PROCESS	200
PART 6. ADMINISTRATIVE	201
ASSESSMENT OF TAXES	201
LEVY AND COLLECTION OF TAXES	201
SCHOOL FINANCE	201
SCHOOL ADMINISTRATION	202
BOARD OF SCHOOL BUDGET SUPERVISORS	202
ELECTIONS	202
WEED CONTROL	202
PUBLIC ADMINISTRATOR	203
TAX APPEALS BOARD	203
CHAPTER 9. LOCAL GOVERNMENT FINANCES	205
PART 1. GENERAL PROVISIONS	207
STRICT ACCOUNTABILITY	207
LOCAL GOVERNMENT FINANCE ADVISORY COUNCIL	207
TECHNICAL ASSISTANCE	207
FINANCIAL RULES AND FORMS BY THE DEPARTMENT OF COMMUNITY AFFAIRS	207
LOCAL FINANCE ORDINANCES	208
ANNUAL COMPILATIONS BY DEPARTMENT OF COMMUNITY AFFAIRS	208
AUDITS	208
GENERAL DEFINITIONS	208
PART 2. BUDGET AND APPROPRIATION	215
PURPOSE	215
BUDGET ADMINISTRATOR	215
TRANSITION	215
FISCAL YEAR DEFINED	215
BUDGET INFORMATION AND ESTIMATES	215
BUDGET PREPARATION	215
SUBMISSION AND PUBLIC HEARING	216
ADOPTION OF BUDGET	217
FIXING LEVIES	217
FILING OF BUDGET	217
UNEXPENDED APPROPRIATIONS	217
APPROPRIATION TRANSFERS	218
BUDGET AMENDMENT	218
EMERGENCY APPROPRIATIONS	218
FINANCING FOR EMERGENCY APPROPRIATIONS	218
ANNUAL REPORT	219
INTERIM BUDGET	219

PART 3. LOCAL GOVERNMENT FINANCIAL ADMINISTRATION . . .	221
GENERAL PROVISIONS	221
TRUST AND AGENCY	221
ACCOUNTING AND REPORTING	221
CASH MANAGEMENT	222
TREASURY FUNCTIONS	222
DEPOSIT AND INVESTMENT OF PUBLIC MONEYS	223
PETTY CASH	224
EXPENDITURES	224
PURCHASING	225
MONTANA CONTRACTORS, MATERIALS, AND LABOR	227
EXEMPT PURCHASES	227
PROPERTY CONTROL	227
SALE AND LEASE OF PROPERTY	227
EXCESS EXPENDITURES NOT LIABILITY OF LOCAL GOVERNMENT; PERSONAL LIABILITY OF OFFICER	228
PART 4. SOURCES OF REVENUE FOR LOCAL GOVERNMENTS WITH GENERAL GOVERNMENT POWERS	229
PURPOSE	229
FUNDING OF MANDATED STATE SERVICES AND FACILITIES . .	229
SOURCES OF REVENUE	229
PROPERTY TAXES	232
LOCAL INCOME TAX	233
MOTOR VEHICLE LICENSE TAX	236
SELECTIVE EXCISE TAXES	236
PART 5. DEBT MANAGEMENT	237
PURPOSE	237
GENERAL DEFINITIONS	237
CAPITAL IMPROVEMENT PROGRAM	238
DEBT INCURRED WITHOUT A VOTE	238
INSTALLMENT PURCHASES	238
DEPARTMENT OF COMMUNITY AFFAIRS - RULE MAKING, REPORTING AND TECHNICAL ASSISTANCE	239
APPLICATION OF THIS TITLE TO PENDING AND OUT- STANDING BONDS	239
DEBT LIMITS	240
GENERAL OBLIGATION BONDS	241
ELECTION ON GENERAL OBLIGATION BOND	241
TERMS OF SALE AND PAYMENT	241
PERFORMANCE OF WORK	242
GENERAL OBLIGATION BONDS ISSUED WITHOUT A VOTE . . .	242
REVENUE BONDS	243
PERFORMANCE OF WORK	244
PAYMENT ON REVENUE BONDS	244
UNDERTAKINGS TO BE SELF-SUPPORTING	245
LOCAL IMPROVEMENT BONDS	245
REFUNDING BONDS	246
BOND ANTICIPATION BORROWING	247
REPAYMENT OF NOTES	247
LIMITATION	248
CONDITIONS OF SALE AND MISCELLANEOUS PROVISIONS . .	248
BOND REGISTER	249
LOST BONDS OR WARRANTS	249

VALIDITY OF BONDS . . . . .	.250
LIABILITY OF MEMBERS OF GOVERNING BODY . . . . .	.251
PART 6. FISCAL EMERGENCIES . . . . .	.253
PURPOSE . . . . .	.253
LOCAL GOVERNMENT FISCAL EMERGENCIES . . . . .	.253

PREFACE

Introduction

State and local officials have long realized that local governments need more freedom if they are to meet the needs of their citizens. The new Montana Constitution now provides for such freedom, but its provisions must be carefully implemented. This staff draft of the new local government code is intended to replace the present tangle of confusing, conflicting, and unnecessarily complex local government laws with a new set of laws that will give local governments the authority to deal effectively with their problems; it is intended to provide cities, towns, and counties flexibility of form, function, and finance while strengthening accountability and responsibility of local officials and facilitating improved management and fiscal control.

The code is consistent with the spirit of the legislation adopted by the 1975 legislature providing citizens the opportunity to select new forms of local government and adopt self-government (home rule) powers. And it is another major step in implementing the 1972 Montana Constitution and fulfilling Governor Thomas L. Judge's goal that:

...the decade of the "70's" should be remembered in Montana's history as the "Decade of Local Government." ... these years [should] be remembered for the progress made in providing Montana's citizens with modern, efficient, responsible and economical local government...

The new Montana Constitution and the proposed staff draft of the code of local government laws will permit local governments to be partners--not stepchildren--of the state.

Schedule for Review

The staff draft is being distributed at this time to provide an opportunity for all interested citizens, officials, and groups to review and comment on the staff suggestions prior to their adoption by the Commission in September for submission to the 1977 legislature. Sixteen hundred copies are being distributed now prior to public hearings across the state in May and June.

A second set of hearings will be conducted in September after the Commission has given tentative approval to the code in August.

Authority

The statutory mandate of the State Commission with regard to the new local government code is set out in section 16-5117 (1). This section states:

The Commission shall make a detailed and thorough study of local government structure, powers, services, finance and state-local relations. The commission shall prepare a revised code of local government law based on its studies and may make other recommendations for the improvement of local government.

This section clearly authorizes the State Commission on Local Government to go beyond a mere recodification of existing local government laws and to make substantive revisions in local government laws where study shows such changes are needed.

Principles

The authorization to propose changes in local government laws makes a clear statement of principles of paramount importance. The staff drafting effort on the new code was guided by the general principles approved by the Commission when it adopted Staff Report No. 2, "Proposed Outline for A Code of Local Government Laws," on May 31, 1974. These principles include the use of uniform terminology, a simplification of language, the integration of all provisions dealing with local government into a consistent interrelated whole, the elimination of conflict, and the consolidation into single sections of similar provisions in existing law. All drafting decisions were guided by the often avowed Commission goal of increased flexibility and accountability of local government.

The framework of the code within which these principles have been applied was established by 1975 legislative approval of Commission proposed House Bill 178. HB 178 provided for a single unified code of laws for both municipalities and counties consisting of nine parts to be included in a new Title 47A of the Revised Codes of Montana.

The collection of all major local government laws into a single title contrasts with the existing organization of Montana's local government laws which basically are found in Titles 11 and 16 of the Revised Codes of Montana, 1947. These two titles on counties, cities, and towns contain nearly 1,100 pages, and led the constitutional convention study on local government to observe: "[one] becomes suspicious that the pages were dropped on the way to the bindery and were never straightened out before they were bound." The problems of overwhelming volume and disorganization

are compounded by the fact that these two titles are by no means complete. Other important provisions imposing duties, granting powers, and prescribing procedures with regard to local government are found in at least 15 additional titles ranging from Title 1 dealing with aeronautics to Title 92 dealing with workmen's compensation. The accumulation of over 2,200 sections has never before been analyzed or revised. New laws simply have been piled on the heap of old ones.

The new code applies to both counties and municipalities, uses common provisions wherever possible, is organized in nine parts containing forty chapters, 181 pages, and 318 sections with seven chapters of the forty not yet included in this draft.

The recodification draws together sections of law now scattered throughout the Revised Codes, harmonizes provisions which currently conflict, eliminates unnecessary detail, particularly with regard to the functions of counties, and adopts terminology which is clear, concise, and of uniform applicability.

Other benefits occurring from the revision are the elimination of unconstitutional provisions and the transfer to other titles of those sections of law which do not belong in the local government code.

Fundamental to the achievement of all these goals was the drafting of a body of law which not only makes them possible but which is also readily comprehensible to layman and lawyer, official and citizen alike. The drafting of laws which provides for public participation in local government will be of little value if its provisions are not clear enough for ready comprehension by the layman.

It is small wonder that when the existing loosely structured body of local government law confronts part-time elected officials, part-time county and municipal attorneys, and untrained employees, there is confusion, delay in decision making, or inaction. It is hoped that clear, concise, and comprehensive grants of authority in the proposed code will be an effective tool for local officials and citizens to use in solving local problems.

Major Recommendations

The two most important characteristics of the code are the implementation of the constitutional provisions providing legislative powers for counties and granting counties substantially the same authority as municipalities to provide services. These provisions represent a dramatic change from the current practice of treating counties as mere administrative agencies of the state and will give county governments the power they need to deal with pressing local problems.

In contrast to the fragmented authority in existing laws, all the provisions granting powers to counties and municipalities and all the provisions granting local governments the authority to provide services and facilities are grouped together into comprehensive lists of local government powers and services. This comprehensive listing of local authority to provide services will clarify the authority of local governments to provide services.

The code contains provisions to facilitate the transfer of service responsibilities between counties and municipalities and to clarify the extraterritorial authority of municipalities.

The code gives local governments wide discretion as to the manner in which departments and boards are organized and provides standard procedures for the creation of special districts.

The multitude of special provisions in existing law for creating districts are replaced with uniform provisions for creating only two types of districts: subordinate service districts and local improvement districts.

All existing districts such as fire districts and weed control districts are reorganized as subordinate service districts and existing laws establishing boards for such districts are continued with the status of local ordinances until August 1, 1978. By that date all such boards must be reorganized under local ordinances.

A single law authorizing local improvement districts replaces the multitude of special provisions for municipal special improvement districts and county rural improvement districts.

The code authorizes county legislative bodies to establish the duties and responsibilities of all local government officers, departments, and boards and to establish the salaries of all officers and employees. All current pension and employee benefits are continued.

The code specifies the services that local governments provide as agents of the state. Currently, statutes specifying duties as agents of the state are scattered throughout the code, and the role of local governments is not always clear. In a single part, the new code specifies those things that local governments will continue to do as agents of the state. When acting as agents of the state, all local governments will be subject to uniform regulation. Duties will include such functions as maintaining records required by the state, including land, water, vital statistics and court records; conducting state elections; collecting taxes; enforcing state laws; administering welfare; and providing tax appeal procedures.

The code clarifies existing annexation laws, eliminates most current exceptions, and permits annexation of rural fire districts and industrial sites.

Election provisions are standardized as are recall, initiative, and referendum procedures for all local governments. There are standardized provisions for petitions, publishing notice, holding public hearings, filing protests and filling vacancies. The code contains a code of ethics for local officials as required by the constitution and provision for open meetings.

The financial chapters authorize a transition to a system of program budgeting by local governments and a new October to September fiscal year to replace the current July to June fiscal year. The new fiscal year and budget cycle will permit local governments to adopt a budget prior to the beginning of the next fiscal year.

The code clarifies the authority of local governments to raise revenue through license, permits, service charges, special assessments, and other non tax sources.

The code eliminates the multitude of single purpose mill levy limits and replaces them with a 55 all purpose mill levy limit for counties and a 65 all purpose mill levy limit for municipalities.

The code also authorizes five new local option taxes. These options include an income tax, levied only after an affirmative vote of the people, motel or hotel tax, fuels tax, franchise tax, and a tax on the purchase of certain utility services.

The code consolidates all the laws regulating local government debt into three basic categories--general obligation, revenue, and local improvement district bonds--and provides common procedures for the issuance of each type of bond. The existing statutory debt limits are continued.

The code consolidates and systematically arranges the statutes regulating local government finance administration. Budgeting, accounting, and reporting requirements are simplified and standardized as are the procedures for receipt, deposit, investment, and expenditure of monies and procedures for purchasing and contracting.

Title 47A and Self-Government Powers

Article XI of the 1972 Montana Constitution authorizes local governments to operate with either general government or self-government powers.

Title 47A is designed to implement this "dual system" of local government powers. Any power under either system is to be exercised by ordinance.

Local governments operating under general government powers, according to Section 4, Article XI of the Constitution, are to have all powers provided or implied by law. The powers provided by law for general powers local governments are found in Chapter 5 of Title 47A and the procedures, structures, and methods of finance that must be used to implement these powers are found in the remaining

chapters. Since Title 47A is intended to be read and interpreted as a whole, the nine separate chapters together constitute the system under which every local government in Montana will continue to function unless they adopt self-government powers.

As provided in Sections 5 and 6, Article XI of the Constitution, local governments authorized by their voters to operate under self-government powers, or home rule, are to have any power not prohibited by the Constitution, law, or charter. Chapter 7, Part 1 and Part 2 of Title 47A contain the limitations on self-government powers imposed by law. These are two parts of the new local government code that have already received legislative approval and have the status of law.

Chapter 7, Part 2 provides for four categories of prohibitions on self-government powers: those powers denied, those powers requiring delegation, those powers which must be exercised consistently with state regulations, and mandatory provisions. It is the last category which makes certain chapters and parts of Title 47A applicable to all local governments, whether they operate with self-government or general government powers. Section 47A-7-204 makes the following chapters and parts of Title 47A applicable to units of local governments with self-government powers:

- Chapter 1, Part 1
- Chapter 1, Part 2
- Chapter 1, Part 3
- Chapter 2
- Chapter 3, Part 1
- Chapter 3, Part 3
- Chapter 3, Part 5
- Chapter 6, Part 2
- Chapter 6, Part 6
- Chapter 8
- Chapter 9, Parts 1, 2, 3, 5 and 6

These provisions are a prohibition on a self-government unit from acting except as specifically provided. If the code is enacted, therefore, a self-government unit would be subject to these provisions in the identical manner as a local government with general powers. For example, a municipality with self-government powers would be subject to the general state laws on annexation and required to adhere to the procedures and requirements in Chapter 2, Part 2. Self-government units would be similarly required to conduct elections only as provided in Chapter 3, Part 5.

Chapter 7, Part 1 of Title 47A specifies that all other state statutes on local government will continue to apply to a self-government unit until they are superseded by ordinance. So, while the thirteen references listed above will apply permanently to a local government with self-government powers and cannot be superseded, all of the remaining chapters and parts of Title 47A will

continue to apply to a self-government unit only until that local government adopts an ordinance superseding that law. For example, Chapter 3, Part 4 regarding the creation, administration, and dissolution of subordinate service districts will apply to a self-government unit until that local government adopts an ordinance superseding a specific provision of that part. Likewise, the provisions of Chapter 6, Part 1 will apply and a self-government unit will be authorized to provide only those services listed until it adopts an ordinance to provide any other service not specifically listed.

To summarize, Title 47A is designed to (1) provide the complete statutory authorization for a local government with general government powers to operate and (2) establish the limitations on local governments with self-government powers. All powers are to be exercised by ordinance. A self-government unit will have the discretion to exercise any power that a general power local government is authorized to exercise, but it will also have the additional discretion to exercise any additional power so long as it is not prohibited by one of the four categories in Chapter 7, Part 2. This format is intended to permit a self-government unit to continue to operate under all of the provisions of the code, or to decide to exercise an additional power or institute a different procedure by adopting an ordinance. The remaining provisions of Title 47A would continue to apply until similarly superseded.

Service Laws

This draft is complete except for eight parts of Chapter 6, Services, that will provide for and regulate the delivery of services by general powers local governments.

Studies currently being undertaken by the State Commission staff will result in expansion and refinement of Chapter 6, Services. Specifically, as the service studies are completed, appropriate parts will be added to Chapter 6, Services, setting out either a specific mechanism or standards for the delivery of a particular service. A list of the anticipated chapters can be found in Chapter 6 of the code. These laws will be included in the draft for September hearings.

Not included in the draft are a number of areas which existing law codifies in either Title 11, Cities and Towns, or Title 16, Counties. These areas will, under the recodification plan developed by Code Commissioner Diana S. Dowling, be included as a part or chapter in other titles of the recodified Montana Code Annotated. These areas include Police and Municipal Courts (Title 11, Chapters 16 and 17) and Clerk of the District Court, and Constable and Justices of the Peace (Title 16, Chapters 30 and 36), which will be transferred to the new code title on Courts and Judiciary; police and fire pension and retirement rights (parts of Title 11, Chapters 18 and 19), which will be transferred to the new code title on Public Pensions. Further information on the general recodification being

undertaken by the Code Commission may be obtained directly from that office. It should also be noted that inclusion of a subject in another title does not preclude revision by the State Commission on Local Government if study shows that changes are needed.

Reading the Proposed Code

The core of the proposed local government code can be divided into five major categories:

- Services -- what a local government can provide for its citizens;
- Powers -- what powers a local government may exercise to provide services;
- Structures -- through what mechanisms a local government may exercise its powers to provide a service;
- Finance -- how the services are to be financed; and
- Duties -- what things a local government must do as an agent of the state.

While other parts of the proposed code are important, the provisions dealing with services, powers, structures, finance and duties are essential.

For individuals reviewing the proposed local government code for the first time, the following procedure may facilitate an understanding of how the various parts are intended to relate to one another. After reading the introductory material in the front of this publication and rather than beginning with Chapter 1, Part 1, and reading the code cover to cover, the reviewer should start with Chapter 6. The two parts of this chapter list the services which local governments will be authorized to provide and the regulatory authority which they may exercise.

The next stop is Chapter 5 which lists the powers that general powers local government will be able to use to provide any authorized service.

The third component of the new code that the reviewer should consider is the structures through which the local government may exercise its powers and provide different services. The basic structures are set out in Chapter 3, Part 4. This part also specifies the relationship between subordinate service districts and the general administrative structure of local government.

The fourth essential component of the proposed code is finance, how local government is to pay for the services it provides. The finance provisions are set out in Chapter 9 of the proposed code.

The final essential component of the new code is the part relating to the duties of local government as agents of the state. Relating almost entirely to counties, the duties of local government are set out in Chapter 8 of the proposed code.

A reading of these five major divisions of the code will provide the reviewer a systematic introduction to the code. The remaining chapters can then be read to fill in the details on legislative and administrative procedures, employee rights and benefits, and creating local governments and changing their forms of government.

Disposition charts comparing Title 47A with Title 11 and 16 are available from the State Commission on Local Government office. Section comments, source notes, and other explanatory material is being prepared and will be available on request from the Commission.

Review and Comment

The hearing schedules will provide ample opportunity for review and comment on the proposed code by interested citizens and officials prior to the approval and referral by the Commission of the proposed code to the 1977 legislature. If code reviewers at any time have questions, reactions, or thoughts with regard to the proposed code, or any other aspect of local government, please feel free to contact any member of the State Commission staff. We would greatly appreciate written comments and suggestions regarding the code.

The proposed code was developed in consultation with local government officials and employees and changes were based on their identification of problems created by existing state laws and their suggestions for improvements. Meetings were held with municipal and county clerks, attorneys, and treasurers; city and town mayors, managers, and aldermen; and county commissioners.

The review and comments on earlier staff drafts by local officials have been especially helpful. Dean Zinnecker, Executive Director of the Montana Association of Counties; Dan Mizner, Executive Director of the Montana League of Cities and Towns; George H. Pendergast, Administrator of the Local Government Services Division of the Department of Community Affairs; Chuck Painter, Missoula County Director of Administrative Services; and members of their staffs reviewed earlier staff drafts of the code.

The staff is looking forward to working with the Commission, citizens, and state and local officials to improve and refine the proposed code.

The authorization for the preparation of the revised local government code by the 1975 legislature will give the 1977 legislature the opportunity to fully review the existing authority of local governments and implement the opportunity created by the 1972 Constitution to increase local government accountability and responsibility while providing flexibility of form, function, and finance for local governments.

SUMMARY OF LOCAL GOVERNMENT CODE

TITLE 47A

Chapter 1. GENERAL PROVISIONS AND DEFINITIONS

Part 1. General Provisions

This Part has no precise counterpart in existing law. Under existing law, similar provisions are scattered throughout Titles 11 and 16 with each provision applicable to only a part of the Title in which it is found. By grouping them in one place, repetition is eliminated.

Part 2. Definitions and Construction

While small groups of definitions and various sections establishing a rule or rules of construction can be found in many, if not most, of the chapters of Titles 11 and 16, this Part represents a significant departure in that for the first time definitions are grouped together and made applicable to the whole code rather than to a single chapter or part of a chapter. This grouping makes it easier to determine what a particular section means and helps to unify the code by giving a common meaning to the terms used throughout. It should be noted that this method of grouping is characteristic of a good deal of modern legislation, for example, the Uniform Commercial Code (Title 87A) and the new Montana Criminal Code (Title 94).

Part 3. Provisions Common to All Forms of Local Government

This Part sets out standard provisions for such commonly used procedures as notice, petition, public hearings, and protests. By setting these items out in a single Part and making it applicable to the entire code, it is possible to eliminate the current practice of setting these provisions out in detail in each section where used. Standard provisions will avoid and reduce the confusion inherent in half a dozen different notice requirements.

Part 4. Public Meetings, Records, and Reports

This Part implements constitutional provisions by providing for open public meetings and public access to public records. Based largely on existing law, this Part also provides for protection of privacy and for the destruction of old records.

Chapter 2. LOCAL GOVERNMENT FORMATION

Part 1. Incorporation and Disincorporation of Municipalities

Part 1 basically represents a recodification of existing Title 11, Chapters 2 and 3. For both incorporation and disincorporation, language used in existing law has been modernized and consolidated in this Title. The most significant substantive changes are a stiffening of petition requirements for incorporation and a provision allowing state aid to a subordinate service district serving a disincorporated municipality.

Part 2. Annexation

While Part 2 essentially restates the methods of annexation currently authorized, there are significant changes. These changes include the elimination of the fire district exclusion contained in Section 11-519(2)(d), R.C.M. 1947 and an authorization to annex wholly surrounded areas used for industrial or manufacturing purposes without consent. The Part also makes it clear that each annexation method is separate and distinct rather than cumulative.

Part 3. County Boundaries and County Seats

Part 3 provides a simple, clear method by which citizens or county governing bodies can propose either the merger of counties, an alteration of county boundaries, or a change in the location of a county seat. As required by the Constitution, a majority vote is required in each county affected.

Part 4. Consolidation, Confederation and Merger

Basically descriptive, this Part describes the methods by which consolidation, confederation, and merger can be achieved and describes the resultant entity.

Chapter 3. LOCAL GOVERNMENT STRUCTURE AND ORGANIZATION

Part 1. Review, Amendment, and Adoption of Local Government Form

This Part recodifies the existing Voter Review law. The constitutional requirement of review at ten year intervals is met by directing that the question of establishing a study commission shall be submitted to the voters of each local government every ten years. It also provides for submission of amendments to an existing plan or a new plan of government to the voters after either petition to or resolution of the governing body.

Part 2. Alternative Forms of Local Government

This Part was proposed by the State Commission and adopted by the legislature during the 1975 session.

Part 3. Legislative Organization and Procedure

This Part sets certain minimum standards and procedural requirements for the exercise of legislative powers by local governments. It assures a minimum of legislative "due process." A local government may, under this Part, adopt additional rules governing its legislative procedures, adopt codes by reference, and enter into interlocal agreements. The requirements for the granting of a franchise and the powers of referendum and initiative are found in this Part.

Part 4. Departments, Offices, Authorities, Boards, Subordinate Service Districts, and Local Improvement Districts

Part 4 contains the authorized administrative structures through which a local government may act. The authorization for a local government to establish departments and boards, of either an administrative or advisory nature, is included. For the first time in Montana there is a clear distinction made between those districts which because of special enabling legislation are autonomous from a local government and those which may be created and abolished and are clearly subordinate to a local government. An important feature of this Part is that it contains a single method for creating a district to provide any service or to install an improvement, a departure from the existing practice where each service and improvement has a unique method for creation.

Part 5. Elections

This Part contains the special provisions necessary for local government elections. It standardizes election procedures and makes the provisions of Title 23 clearly applicable to local government elections.

Chapter 4. ADMINISTRATIVE PROVISIONS

Part 1. Personnel System

This Part authorizes but does not require a civil service board. Other provisions include a prohibition of nepotism, authorization of a "4/40" work week, and related provisions.

Part 2. Wages, Expenses, and Benefits

Part 2 is essentially a recodification of the existing laws governing wages, expenses, and benefits of local government employees. Included are such items as vacation and sick leave, holidays, and the authorization for participation in pension systems and health insurance plans.

Part 3. Official Bonds

This Part combines and recodifies the existing law on official bonds. There is no change in substance.

Part 4. Ethics

This Part recodifies into one section the existing laws governing conflict of interest of public officials and employees and spells out minimal standards of conduct for officers and employees.

Chapter 5. POWERS OF GENERAL POWER LOCAL GOVERNMENTS

Part 1. General Government Powers

This Part is a departure from the current organization of local government laws. While no new powers are granted to local governments by this Part, it organizes in one place all of the grants of power to local governments that are currently scattered throughout Title 11 and Title 16. It specifies the general areas in which a local government may exercise legislative powers that include the levying of any authorized tax and the exactment of ordinances. It also lists the general powers that a local government may exercise in conducting its affairs and in providing authorized services, including the power to sue, to hire and discharge employees, and to initiate a civil action.

Chapter 6. SERVICES OF GENERAL POWER LOCAL GOVERNMENTS

Part 1. General Service Authorization

Part 1 contains a list of all services that a local government may provide and a list of all of the regulatory powers that a local government may exercise. The organization of all authorized services in one section is a departure from the current condition where specific laws authorizing specific services are scattered throughout ninety Titles of law. Any of the services authorized by this Part may be provided by any of the eight methods authorized by this Part. Consequently, a local government may first choose to provide any of the services authorized and then determine which method it will use to deliver the service. This flexibility too is a departure from existing practice where each service has a specified method for delivery.

Part 2. Establishment and Allocation of Services

Part 2 specifies three procedures that may be used to establish any authorized service on a jurisdictionwide or less than jurisdictionwide basis. It contains separate provisions for funding those services provided less than jurisdictionwide, prohibiting the use of general tax revenues for those services. This Part also defines those services that are exclusively county services, those services and regulatory powers that a municipality may provide and exercise on an extraterritorial basis (up to five miles) and the processes by which (1) a municipality and a county may resolve conflicts when each desires to deliver a service to the same area, (2) a municipality may transfer the responsibility for a service to a county, and (3) a municipality may provide services otherwise reserved to the county.

Part 3 through Part 10

These Parts, when completed, will establish minimal requirements and procedures that must be observed by a local government in providing any service authorized by Chapter 6, Part 1. These laws will grant any unique or extraordinary powers that are necessary only for a particular service, e.g. the power to destroy unclaimed animals, but will be regarded as powers that may be exercised in addition to any power authorized in Chapter 5. Any specific requirements or procedures contained in these laws will be designated as either additional requirements and procedures to the general provisions found elsewhere in 47A or as requirements and procedures that supersede those general provisions in the delivery of the particular service.

These Parts will govern the delivery of these categories of services: Agricultural Services; Community Development; Community Services; Emergency Services; Human Services; Solid Waste; Transportation; and Water and Waste Services.

Initial drafts of these laws have been prepared but not included in this draft of the code. The drafts are available for review and comment from the Commission Office upon request. Meetings designed to review these draft laws are scheduled for future months. Public hearings on these laws will be held in September.

Chapter 7. POWERS AND SERVICES OF SELF-GOVERNMENT LOCAL GOVERNMENTS

This Chapter was proposed by the State Commission and adopted by the legislature during the 1975 session. Amendments are proposed to Part 2 to assure conformity with Title 47A.

Chapter 8. DUTIES OF LOCAL GOVERNMENTS AS AGENTS OF THE STATE

Part 1. General Provisions

This Part establishes the purpose of Chapter 8 and assigns general responsibility for providing the required services.

Part 2. Records

This Part continues the duty currently imposed on counties to keep certain records and indexes.

Part 3. Public Health

This Part continues the existing health duties of counties and continues the general supervisory control of the State Department of Health and Environmental Sciences but eliminates the requirement for health boards.

Part 4. Law Enforcement

This Part continues the current county duties of enforcing laws, prosecuting violators of state law, and maintaining a jail meeting certain standards.

Part 5. Judicial

This Part continues the county's duty to provide for at least one justice of the peace and to provide him with materials and facilities. Also continued are the county's duties to the district court, which include providing a clerk of court and adequate facilities for the court.

Part 6. Administrative

This Part imposes a number of duties on counties, which include the duty to collect state, school, and municipal taxes, the duty to provide for school administration required by Title 75, the duty to conduct state elections, the duty to control noxious weeds, the duty to provide for a public administrator, and the duty to establish a tax appeals board.

Chapter 9. LOCAL GOVERNMENT FINANCES

Part 1. General Provisions

This Part sets forth the general responsibility of the local government in the administration of local moneys. Along with the local government's responsibilities, the basic role of the state in local government finance is established. This role includes the basic constitutional supervision that is required of the state and the provision of technical assistance to the local governments. Definitions that apply throughout Chapter 9 are included in Part 1.

Part 2. Budget and Appropriation

This Part contains three basic differences from the present budgeting system; the most important is the change of the fiscal year from July-June to an October-September cycle. Second, the preparation of a budget is assigned to a specific individual or individuals. The third change provides for the transition from the traditional budgets to program and performance budgets.

Part 3. Local Government Finance Administration

This Part brings together all those sections of present law scattered throughout the codes that identify the responsibilities and duties for the day-to-day administration of local government finances. Also, this Part provides the governing body the authority to identify one department or office to be responsible for finance administration or allocate the duties between departments and offices.

Part 4. Sources of Revenue for Local Governments With General Government Powers

Part 4 provides general power local governments the authority to raise revenue to finance services and facilities. Both counties and municipalities are granted an all-purpose mill levy to replace the existing multiple levies, and both general powers and self-government powers local governments are authorized

several new local option taxes. These options include an income tax, levied only after an affirmative vote of the people, motel or hotel tax, fuels tax, franchise tax, and a tax on the purchase of certain utility services.

Part 5. Debt Management

This Part consolidates all the laws regulating local government debt into three basic categories -- general obligation, revenue, and local improvement district bonds -- and provides common procedures for the issuance of each type of bond. The existing statutory debt limits are continued and municipalities as well as counties are authorized to incur debts up to \$40,000 without a prior vote of the electorate. Counties are given the same authority as municipalities to issue revenue bonds.

Part 6. Fiscal Emergencies

This part provides, in alternative language, the mechanisms for the operation of local governments in the event of a fiscal emergency.

PROPOSED LOCAL GOVERNMENT CODE

TITLE 47A, R.C.M., 1947

OUTLINE OF LOCAL GOVERNMENT CODE

TITLE 47A

CHAPTER 1.	GENERAL PROVISIONS AND DEFINITIONS	23
Part 1.	General Provisions	25
Part 2.	Definitions and Construction	27
Part 3.	Provisions Common to All Forms of Local Government	33
Part 4.	Public Meetings, Records, and Reports	37
CHAPTER 2.	LOCAL GOVERNMENT FORMATION	39
Part 1.	Incorporation and Disincorporation of Municipalities	41
Part 2.	Annexation	47
Part 3.	County Boundaries and County Seats	55
Part 4.	Consolidation, Confederation and Merger	59
CHAPTER 3.	LOCAL GOVERNMENT STRUCTURE AND ORGANIZATION	61
Part 1.	Review, Amendment and Adoption of Local Government Form	63
Part 2.	Alternative Forms of Local Government	75
Part 3.	Legislative Organization and Procedure	95
Part 4.	Departments, Offices, Authorities, Boards, Subordinate Service Districts, and Local Improvement Districts	105
Part 5.	Elections	127
CHAPTER 4.	ADMINISTRATIVE PROVISIONS	135
Part 1.	Personnel	137
Part 2.	Wages, Expenses, and Benefits	141
Part 3.	Official Bonds	145
Part 4.	Ethics	147
CHAPTER 5.	POWERS OF GENERAL POWER LOCAL GOVERNMENTS	149
Part 1.	General Government Powers	151
CHAPTER 6.	SERVICES OF GENERAL POWER LOCAL GOVERNMENTS	155
Part 1.	General Service Authorization	157
Part 2.	Establishment and Allocation of Services	163
	Outline of Subsequent Parts	169

CHAPTER 7.	POWERS AND SERVICES OF SELF-GOVERNMENT LOCAL GOVERNMENTS . . . . .	.171
Part 1.	Powers of Self-Government Local Governments . . . . .	.173
Part 2.	Limitations on Self-Government Local Governments . . . . .	.174
CHAPTER 8.	DUTIES OF LOCAL GOVERNMENTS AS AGENTS OF THE STATE . . . . .	.177
Part 1.	General Provisions . . . . .	.179
Part 2.	Records . . . . .	.181
Part 3.	Public Health . . . . .	.187
Part 4.	Law Enforcement . . . . .	.189
Part 5.	Judicial . . . . .	.197
Part 6.	Administrative . . . . .	.201
CHAPTER 9.	LOCAL GOVERNMENT FINANCES . . . . .	.205
Part 1.	General Provisions . . . . .	.207
Part 2.	Budget and Appropriation . . . . .	.215
Part 3.	Local Government Financial Administration . . . . .	.221
Part 4.	Sources of Revenue for Local Governments with General Government Powers . . . . .	.229
Part 5.	Debt Management . . . . .	.237
Part 6.	Fiscal Emergencies . . . . .	.253

CHAPTER 1

GENERAL PROVISIONS AND DEFINITIONS

CHAPTER 1, PART 1

GENERAL PROVISIONS

47A-1-101. TITLE. This title shall be known and may be cited as the "Local Government Code".

47A-1-102. GENERAL PURPOSE OF TITLE. It is the purpose of this title: (1) To fully implement Article XI of the Montana constitution of 1972.

(2) To provide the residents of this state with responsive and responsible local governments the form, structure, and activities of which are determined by the citizens and officials of the local government.

47A-1-103. LIBERAL CONSTRUCTION. (1) As provided in Article XI, section 4 of the Montana constitution of 1972, the provisions of this title shall be liberally construed to effect its purpose.

(2) The rule of law that the powers of a local government shall be strictly construed has no application to the provisions of this title. Any reasonable doubt as to the existence of a power or authority granted by this title to local government shall be resolved in favor of the power or authority's existence.

47A-1-104. POWERS VESTED IN GOVERNING BODY. Unless the context requires otherwise, all powers granted to local governments by this title shall be vested in the governing body of the local government.

47A-1-105. PRIOR RIGHTS AND OBLIGATIONS. This title shall not affect the validity of any bond, debt, contract, obligation, or cause of action accrued prior to May 2, 1977.

47A-1-106. TITLE CONTROLS. In the event that any provision of this title is found to be in conflict with the provisions of any other law, this title shall control.

47A-1-107. TITLE TO BE CONSTRUED AS A WHOLE. This title and amendments hereto are to be construed as a whole.

47A-1-108. SEVERABILITY. If any part of this title is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this title is invalid in one or more applications, the part remains in effect in all valid applications that are severable from the invalid applications.

47A-1-109. STATE TECHNICAL ASSISTANCE. All state agencies are authorized and encouraged to provide technical assistance to local governments. The department of community affairs shall coordinate technical assistance provided to local governments.

47A-1-110. PENALTY. (1) The failure of an officer or employee to perform a duty imposed by this code is official misconduct as defined in 94-7-401 and may be punished as such.

(2) Where a local government is required by state law to provide information to a state agency and fails to provide the required information, the department of community affairs may issue an order stopping payment of any state financial aid to the local government. Upon provision of the information, all financial aid which was stopped because of failure to provide the information shall be paid to the local government.

CHAPTER 1, PART 2

DEFINITIONS AND CONSTRUCTION

47A-1-201. GENERAL CONSTRUCTION. (1) Except when a specific definition is given or a technical interpretation is required, words and phrases used in this title shall be construed according to their ordinary usage in the English language.

(2) Words used in the present tense include the future tense.

(3) The singular includes the plural.

47A-1-202. GENERAL DEFINITIONS. In this title, unless otherwise provided or the context requires a technical or other interpretation, the following definitions apply:

(1) "Appointing authority" means the chief executive or officer of the local government empowered by the plan of government to appoint or remove specified officers, employees, or board members of the local government.

(2) "Apportionment plan" means a certificate prepared by a governing body or a study commission that contains the districts for electing members of the governing body.

(3) "Authority" means any one of the independent authorities or districts which a local government is authorized to create by 47A-3-412.

(4) "Board member" means a person appointed to an administrative or advisory board as provided in 47A-3-404.

(5) "Boundary" means an imaginary line defining the limits of a county as provided in 16-201 through 16-263.

(6) "Budget administrator" means the officer or officers designated by the governing body to perform the duties prescribed in chapter 9, part 2 of this title.

(7) "Business" includes all kinds of vocations, occupations, professions, enterprises, establishments, and all other kinds of activities any of which are conducted for private profit or benefit, either directly or indirectly.

(8) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations thereon.

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(9) "Chief executive" or "administrative officer" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

(10) "Civil attorney" means the person designated by the governing body as the legal counsel to the local government.

(11) "Clerk of the governing body" means the person appointed by the governing body to perform clerical and other assigned duties to assist the governing body.

(12) "Commission" means the governing body of a local government established by the plan of government.

(13) "Commissioner" means a member of the local government governing body.

(14) "Confederation" means a form of local government that provides for the distribution of the governmental authority between a county and one or more of the municipalities which are located within the county.

(15) "Consolidation" means the joinder of one or more municipalities with one or more counties to form a single local government which is both a municipality and a county for all purposes.

(16) "Consolidation plan" means a certificate prepared by a study commission that contains the plan for consolidation of existing local governments.

(17) "County" means an entity recognized as such by Article XI, section 1 of the Montana constitution.

(18) "County merger" means a form of local government that provides for the joinder of the corporate existence and government of two or more counties.

(19) "Elections administrator" means the person designated as the registrar by the governing body as provided in Title 23.

(20) "Elector" means a resident of the local government qualified to vote under state law.

(21) "Employee" means a person other than an officer who is employed by a local government.

(22) "Executive branch" means that part of the local government, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required in this title, chapter 8.

(23) "Extraterritorial area" refers to the area beyond the municipal limits of an incorporated municipality bounded by those limits and an imaginary line paralleling the municipal limits at a distance of 5 miles within which the incorporated municipality may provide specified services and facilities and exercise designated regulatory powers.

(24) "Facility" means a building, property, physical improvement or system, or structural device that facilitates the delivery of a service.

(25) "Finance administrator" means the person designated under 47A-9-301.

(26) "Form" means a specific and formal governmental organization authorized as an alternative form of government by Title 47A, chapter 3, part 2.

(27) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(28) "Jurisdictional area" refers, in the case of municipalities, to the area within the municipal limits and the extraterritorial area within which the municipality is providing any service or facilities or exercising any regulatory powers. In the case of counties, it refers to the entire geographical area enclosed within the county boundaries.

(29) "Local court" means a justice court, municipal court, small claims court, or police court.

(30) "Local government" means either an incorporated municipality, a county, or a consolidated or confederated unit of government.

(31) "Local improvement district" means an area within a local government with specific boundaries in which property is specially assessed to pay for a specific capital improvement benefiting the property assessed.

(32) "Lot" includes the word "plat" and "parcel" or portion of a lot, plat, or parcel.

(33) "May" confers a power.

(34) "Merger" means the joinder into a single unit of two or more like units of local government. If two counties merge, the resultant entity is a single county. If two municipalities merge, the resultant entity is a municipality.

(35) "Metropolitan service area," which may be established by agreement of municipal and county governing bodies as provided in 47A-6-213, refers to the jurisdictional area of a municipality and any area beyond the extraterritorial area within which a municipality is authorized to provide any service or exercise any regulatory power.

(36) "Multi-county agency" means any organization authorized by state law consisting of two or more counties which is created or required to be created to provide and coordinate services. Participating local governments may provide funding or members to serve on a board, if there is a board, or both.

(37) "Municipal limits" means the corporate boundary of an incorporated municipality.

(38) "Municipality" or "municipal" means an entity which incorporates as provided by chapter 2, part 1 of this title or which was incorporated under the provisions of any prior law as a city or town.

(39) "Office of the local government" means the permanent location of the seat of government from which the records administrator carries out his duties or the office of the clerk of the governing body where one is appointed.

(40) "Officer" means a person holding a position with a local government which is ordinarily filled by election and in those local governments with a manager, the manager.

(41) "Ordinance" means a local law of a general or permanent nature.

(42) "Owner", "record owner", or "owner of record" means owner of record or purchaser of record.

(43) "Person" means any individual, firm, corporation, trust, association, or other organized group.

(44) "Personal property" means tangible property other than real property, such as merchandise and stock in trade, machinery and equipment, furniture and fixtures, motor vehicles and vehicles, boats, vessels, and aircrafts.

(45) "Plan of government" means a certificate submitted by a study commission, a governing body, or petition from the provision of Title 47A, chapter 3, part 2, that documents the basic form of government selected including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(46) "Political subdivision" refers to a local government, authority, school district, or multi-county agency.

(47) "Printed" means reproduced.

(48) "Property" means real and personal property.

(49) "Public agency" means a political subdivision, Indian tribal council, state and federal department and office, and the Dominion of Canada or any provincial department or office or political subdivision thereof.

(50) "Public property" means any and all property owned by a local government or held in the name of a local government by any of the departments, boards, or authorities of the local government.

(51) "Public prosecutor" means the person designated by each county governing body to perform the duties described in 47A-8-403.

(52) "Real property" means land and improvements and all possessory rights and privileges appurtenant to the property and includes personal property affixed to the land or improvements.

(53) "Records administrator" means the person designated by the governing body as the individual responsible for keeping the records which chapter 8, part 2 of this title requires be kept.

(54) "Regular election" means any local election required as a result of the expiration of the term of any elected official.

(55) "Reproduced" means a process, including printing, photostating, photocopying, and carbon copying, by which a copy or copies of an original document are made.

(56) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(57) "School district" means any territory, regardless of county boundaries, organized under the provisions of Title 75 to provide public educational services under the jurisdiction of the trustees prescribed by that title.

(58) "Service" means a system or a method, including the people involved, of performing a task that enhances and promotes a citizen's pursuit of life's basic necessities, the enjoyment and defense of his life and liberty, the defense of his property, and the guarantee of his safety, happiness, and health, including a clean and healthy environment.

(59) "Shall" imposes a duty, is always mandatory, and is not merely directory.

(60) "Special election" means any local election not for the purpose of electing officers. It may be held either at the time of the regular election or at any other time established as provided by law.

(61) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities.

(62) "Study commission" means a local government study commission established pursuant to Title 47A, chapter 3, part 1.

(63) "Study commissioner" means an elected or appointed member of a local government study commission.

(64) "Subordinate service district" means an area within a local government, established as provided in 47A-3-418, with specific boundaries in which certain services are carried out and in which taxes may be levied to finance the service.

(65) "Tribal council" means the governing body of an Indian reservation.

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CHAPTER 1, PART 3

PROVISIONS COMMON TO ALL FORMS OF LOCAL GOVERNMENT

47A-1-301. ADMINISTRATIVE RULES. The governing body may by ordinance authorize the chief executive to adopt administrative rules. All administrative rules shall be entered in an administrative code that shall be available in the office of the local government.

47A-1-302. PUBLISH. Unless otherwise specifically provided, when a local government is required to publish, publication shall be in a newspaper of general circulation in the local government, except that in a municipality with a population of 500 or less, or in which no newspaper is published, publication may be made by posting in three public places in the municipality which have been designated by ordinance.

47A-1-303. NOTICE. Unless otherwise specifically provided, when notice of a hearing or other official act is required by this title, the following shall apply:

(1) The notice shall be published two times with at least seven days separating each publication. The first publication shall be no more than 21 days prior to the action and the last no less than three days prior to the action.

(2) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;

(b) a brief statement of the action to be taken; and

(c) any other information required by the specific section requiring notice.

47A-1-304. MAIL NOTICE. (1) Unless otherwise specifically provided, when a local government is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice properly addressed in the United States mail with postage paid at the first class rate;

(b) sending the notice by registered or certified mail rather than first class; or

(c) mailing the notice at the bulk rate instead of first class when notice is to be given by mail to all electors or residents of a local government.

(2) The notice shall contain:

(a) the date, time, and place at which the hearing or other action will be taken;

(b) a brief statement of the action to be taken; and

(c) any other information required by the specific section requiring mail notice.

47A-1-305. PETITION. (1) Whenever a petition is authorized by this title, unless the section authorizing the petition establishes different criteria, it shall be valid if it is signed by 15% of the electors of the local government and meets the following requirements:

(a) contains a statement of the purpose for which it is circulated sufficient to meet the specific criteria set out in the section authorizing the petition;

(b) each signature is followed by the printed name of the signer, the address of the signer's place of residence, and the date of the signing; and

(c) the petition contains the date it was first circulated and a statement that all signatures must be collected within 90 days of that date.

(2) Unless otherwise provided, all petitions shall be filed with the elections administrator who shall determine the sufficiency of the signatures. No petition filed after the deadline for filing the petition, if any, shall be considered.

(3) Within 10 days of the date the petition was filed, the elections administrator shall determine the adequacy of the petition.

(4) Inadequate petitions shall be returned but may be amended or supplementary signatures may be obtained and the petition may be refiled prior to the deadline for filing the petition.

(5) Within 10 days of its second filing, the elections administrator shall again determine the adequacy of the petition. If it is still determined inadequate, it shall be rejected without prejudice to the filing of a new petition to the same effect.

(6) If a petition is determined adequate, the elections administrator shall certify its adequacy and submit it to the governing body without delay.

(7) A person may in writing withdraw his signature from a previously filed petition at any time prior to final action of the governing body.

47A-1-306. PUBLIC HEARING. (1) As required by this title, the governing body shall conduct public hearings for the purpose of providing reasonable opportunity for citizen participation prior to final decisions.

(2) At a minimum, a public hearing shall provide for submission of both oral and written testimony for and against the action or matter at issue. If the hearing is not held before the ultimate decision makers, provision shall be made for the transmittal of a summary or transcript of the testimony received to the ultimate decision makers prior to their determination.

(3) Public hearings may be held at regular or special meetings of the governing body.

(4) Petitions and letters received by the governing body or executive prior to the hearing shall be entered into the minutes of the governing body and considered as other testimony received at the hearing.

(5) Hearings may be adjourned from day to day or to a date certain.

(6) Except for budget hearings, the governing body may designate a subcommittee to conduct public hearings.

47A-1-307. PROTEST. (1) Whenever a protest is authorized by this title, it is sufficient if it is in writing, signed, and contains the following:

(a) a description of the action protested sufficient to identify the action against which the protest is lodged;

(b) a statement of the protester's qualifications to protest the action against which the protest is lodged; and

(c) the address of the person protesting.

(2) Protests shall be submitted as provided by law and ordinance. The person receiving protests for a local government shall note on each protest the date it was received.

(3) A protest which contains the required information may be signed by more than one person. A protest signed by more than one person is a valid protest by each signer.

(4) A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

(5) Signers are encouraged to print their name after their signature.

47A-1-308. SIGNATURES. The signatures and addresses on petitions and protests shall be the same as the signatures and addresses on voter registration cards, and if not registered, their common signature.

47A-1-309. RIGHTS ON BEHALF OF GOVERNMENT OR CORPORATION. The chief executive of a local government or political subdivision of the state, the responsible agent of a federal or state agency, or the chief executive officer of a corporation may exercise the right of petition, protest, or voting on behalf of property owned by the government or corporation.

47A-1-310. POSTING. (1) The governing body shall specify by resolution a public location for posting information and shall order erected a suitable posting board.

(2) When posting is required by this code, a copy of the document shall be placed on the posting board, and a copy shall be available at the local government office.

47A-1-311. OATHS AND MARRIAGES. The chief executive, chairman of the legislative body, police judges, justices of the peace, and judges of small claims court may administer oaths and solemnize marriages. The clerk of the district court and all elected officers may administer oaths.

47A-1-312. RULES. Rules and regulations authorized by this title may be varied according to the population of the local government or according to any other criteria reasonably related to the complexity of the activities involved.

CHAPTER 1, PART 4

PUBLIC MEETINGS, RECORDS, AND REPORTS

47A-1-401. PURPOSE. It is the purpose of this chapter to assure the people of Montana of their constitutionally guaranteed rights to participate in and to know of the operation of their local government. Toward these ends, the provisions of this chapter shall be liberally construed.

47A-1-402. PUBLIC MEETING REQUIRED. (1) All meetings of local government governing bodies, boards, authorities, committees, or any other entity created by or subordinate to a local government shall be open to the public except as provided in the next section.

(2) Appropriate minutes shall be kept of all public meetings and shall be made available to the public for inspection and copying.

47A-1-403. EXCEPTIONS. A meeting or that part of a meeting which involves or affects the following need not be open to the public:

(1) the employment, appointment, promotion, demotion, disciplining, dismissal, or resignation of a local government official or employee, unless the local government officer or employee requests a public meeting;

(2) the revocation of any license granted by the local government, unless the person licensed requests a public meeting; or

(3) the purchase or sale of public property, the investing of public funds, or other matters involving competition or bargaining which, if made public, may adversely affect the financial interest of the local government.

47A-1-404. PARTICIPATION. In any meeting required to be open to the public, the governing body, committee, board, authority, or entity shall adopt rules for conducting the meeting affording citizens a reasonable opportunity to participate prior to the final decision.

47A-1-405. PUBLIC RECORDS. (1) Except as provided in subsection (2), all records and other written materials in the possession of a local government shall be available for inspection and copying by any person during normal office hours.

(2) Personal records, medical records, and other records which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public, unless the person they concern requests they be made public.

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(3) Law enforcement records which relate to matters in which the right to individual privacy or law enforcement security exceeds the merits of public disclosure shall not be available to the public.

47A-1-406. DESTRUCTION OF OLD RECORDS. (1) The governing body may by ordinance establish a procedure for routine destruction of old worthless reports, papers, or records that have served their purpose and are substantiated by permanent records. The ordinance is subject to the approval of the department of community affairs.

(2) Termination statements filed under the Uniform Commercial Code--Secured Transactions shall be retained by the records administrator for a period of 8 years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by the Uniform Commercial Code--Secured Transactions and as to which no termination statement has been filed, shall be retained by the filing officer for a period of 8 years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of this period all such statements may be destroyed.

47A-1-407. STATE REPORTS. Local government governing bodies, chief executives, officers, employees, departments, boards, and authorities shall file with state agencies in a timely fashion all reports and information required by state law.

47A-1-408. REPORTS OF DEPARTMENTS, BOARDS, AUTHORITIES. (1) All departments, boards, and authorities shall file an annual report with the chief executive who shall compile the reports and present them to the governing body.

(2) The chief executive may specify the form, content, and deadline for filing reports.

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CHAPTER 2

LOCAL GOVERNMENT FORMATION

CHAPTER 2, PART 1

INCORPORATION AND DISINCORPORATION OF MUNICIPALITIES

47A-2-101. AREAS WHICH MAY INCORPORATE. (1) Any community which has at least 1,000 inhabitants and is at least 3 miles from a currently incorporated municipality may incorporate by following the procedures set out in this chapter.

(2) Any community which has at least 1,000 inhabitants and is within 3 miles of a currently incorporated municipality may incorporate if it is shown that the community could have been annexed but was refused annexation.

47A-2-102. PETITION FOR INCORPORATION. (1) Proceedings for incorporation shall be initiated by petition.

(2) A petition requesting incorporation shall:

(a) state the plan of government and name of the proposed municipality;

(b) describe the municipal limits of the proposed municipality;

(c) be filed with the chief executive of the county who shall submit it to the county governing body at its next general meeting; and

(d) be signed by 51% of the electors residing in the proposed municipality.

(3) The county governing body shall determine the adequacy of the petition and, if adequate, shall call for and give notice of an election on the proposed incorporation.

47A-2-103. ELECTION OF INCORPORATION. (1) The election shall be conducted as provided in chapter 3, part 6 for questions submitted to the electors.

(2) Electors are residents of the area included in the proposed municipality who are qualified electors under state law.

(3) Incorporation shall be granted upon an affirmative vote of a majority of those voting on the question.

47A-2-104. ELECTION OF OFFICERS FOLLOWING INCORPORATION.

(1) Upon incorporation, the governing body of the county shall give notice of an election to elect the officers specified in the plan of government adopted by the municipality.

(2) Electors are those qualifying under 47A-2-103(2).

(3) The election shall be conducted by the county in the manner prescribed by chapter 3, part 6 for election of local government officials.

(4) Officers elected shall take office 30 days following their election.

47A-2-105. METHODS OF DISINCORPORATION. Any municipality may be disincorporated by either:

(1) automatic disincorporation; or

(2) election.

47A-2-106. AUTOMATIC DISINCORPORATION. If the governing body of any incorporated municipality ceases to exist or fails to function or meet for a period of 2 years, the governing body of the county in which the municipality is located shall adopt a resolution disincorporating the municipality. Copies of the resolution shall be filed with the chief executive of the county and with the department of community affairs. The resolution shall state an effective date no sooner than 60 days after the resolution's adoption.

47A-2-107. DISINCORPORATION BY ELECTION. (1) Residents of a municipality may petition the county governing body for an election on the question of disincorporation.

(2) The county governing body, upon finding the petition to be adequate, shall order, within 60 days, an election to take place in the municipality on the question of disincorporation. The election may be a special election or held with any other election.

(3) The election shall be conducted as provided in chapter 3, part 6 for questions submitted to the electors.

(4) If a majority of those voting on the question favor disincorporation, the governing body of the county shall adopt a resolution disincorporating the municipality. Copies of the resolution shall be filed with the chief executive of the county and with the department of community affairs. The resolution shall state an effective date no sooner than 60 days after the resolution's adoption.

(5) If less than a majority of those voting on the question favor disincorporation, the governing body of the county shall deny the petition to disincorporate, in which case no election on the question of disincorporation may be held until after 2 years from the date of the election.

47A-2-108. FINANCIAL CONDITION OF MUNICIPALITY. (1) The director of the department of community affairs, upon receiving a copy of the disincorporation resolution, shall certify a current statement of the financial condition of the disincorporating municipality to the county governing body.

(2) The statement shall include, but not be limited to:

(a) a statement of all assets of the municipality, including any warrants, delinquent accounts, and taxes receivable;

(b) a statement of all municipal liabilities, including any revenue or general obligation bonds, local improvement district obligations outstanding, contracts payable, and all other obligations of the municipality; and

(c) a schedule for the payment of liabilities.

(3) Under the supervision of the director of the department of community affairs, the finance administrator of the municipality shall draw a check for the amount of unencumbered cash in the municipality's treasury; and the check shall be made payable to the county and delivered to the chief executive of the county in which the disincorporating municipality is located. The money shall be placed in a special fund, to be drawn upon as provided in 47A-2-110.

47A-2-109. TRANSFER OF PUBLIC PROPERTY AND POLICE COURT RECORDS. Upon disincorporation of a municipality, every officer of the municipality shall immediately turn over to the chief executive of the county in which the municipality is situated all public property in his possession; however, all court records of the police court, if any, shall be transferred to the nearest justice of the peace. The justice of the peace has the authority to execute and complete all unfinished business. All reports and remittances of fines and forfeitures are made in the same manner as prescribed for justices of the peace.

47A-2-110. PAYMENT OF DEBTS AND COLLECTIONS OF RECEIVABLES OF MUNICIPALITY. (1) The disincorporation of a municipality does not invalidate or affect any right, penalty, or forfeiture accruing to the municipality, nor does it invalidate or affect any contract entered into or imposed upon the municipality. All the contracted indebtedness and obligations remain unimpaired by reason of the disincorporation of the municipality.

(2) The county governing body in which the disincorporating municipality is situated shall provide for the payment and discharge of all liabilities and obligations, for the collection of any indebtedness due the municipality, and for the prosecution of any claims accruing to the municipality.

(3) All instruments for the repayment of indebtedness are drawn by order of the governing body of the county on the fund established by 47A-2-108(3).

47A-2-111. TAX LEVY IN THE EVENT OF INSOLVENCY. (1) If, at any time after the disincorporation of a municipality, it is found that there is not sufficient money in the treasury to credit the special fund established by 47A-2-108(3) with which to pay any indebtedness of the municipality, the county governing body shall levy and collect from the territory formerly included within the municipality sufficient taxes or special assessments to pay the indebtedness of the municipality as it becomes due.

(2) The tax or taxes and special assessments shall be made in the same manner and at the same time that other taxes of the county are levied and collected, and are an additional tax on the property included within the territory, or portions thereof, for the payment of its debts. All moneys shall be placed to the credit of the special fund established by 47A-2-108(3).

47A-2-112. SURPLUS ASSETS DEPOSITED TO SPECIAL FUND. If, after the payment of the debts of the municipality, and the liquidation, where possible, of tangible assets, any surplus remains in the special fund, it shall be transferred to the county general fund. Nothing in this section is intended to conflict with the provisions of 47A-2-110 and 47A-2-114.

47A-2-113. COLLECTION OF AMOUNTS DUE TO MUNICIPALITY. (1) The county governing body shall provide for the collection of the amounts due to the disincorporated municipality and for the termination of its affairs, and any act or acts necessary for that purpose and not otherwise provided for shall, upon order of the governing body, be performed by the officer or officers performing similar duties for the county, as if it had been performed by the proper officer of the municipality before disincorporation.

(2) The county shall succeed to and possess all rights of the municipality to indebtedness and has the power to sue for or otherwise collect any debts in the name of the county.

(3) All costs and expenses of ascertaining information and all other costs and expenses incurred by the governing body in the execution of the powers and duties of managing the affairs of the disincorporated municipality shall be paid out of the special fund established by 47A-2-108(3).

47A-2-114. STATE AID. (1) If a municipality disincorporates, the county in which the municipality was located shall be entitled to any state funds which the municipality would have received had it not disincorporated.

(2) The state funds shall be credited to the special fund established in 47A-2-108(3). If state funds are available to a municipality only after application, the governing body of the county may apply for the funds on behalf of the disincorporated municipality.

(3) After the liabilities of the disincorporated municipality have been satisfied and the special fund established by 47A-2-108(3) is terminated as provided in 47A-2-112, the entitlement of the county to a share of state funds allocated to municipalities shall cease unless a subordinate service district has been created as provided in 47A-3-418 which encompasses the area of the disincorporated municipality, in which case the county shall continue to be entitled to state funds allocated to municipalities.

(4) County entitlement to state funds allocated to municipalities shall be established by treating the area included within the subordinate service district as a municipality.

(5) State funds received by a county for a disincorporated municipality shall, after termination of the special fund, be credited to the subordinate service district and may be expended only for the specified purposes.

CHAPTER 2, PART 2

ANNEXATION

47A-2-201. POLICY AND PURPOSE. (1) The following is declared policy of the state of Montana:

(a) Orderly urban development is essential to the continued economic development of the state.

(b) A municipality is an appropriate unit of local government to provide the governmental service essential for orderly urban development and for the protection of health, safety, and welfare in areas being used intensively for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development.

(c) Annexation must be based on the interests of those being annexed and on the interests of the community as a whole.

(2) It is the purpose of this part to effect these policies by facilitating municipal annexation.

(3) To effect the foregoing policies and purposes, this part provides four separate and distinct procedures by which areas may be annexed to a municipality. The first procedure is set out in 47A-2-205, the second in 47A-2-206, the third in 47A-2-207, and the fourth in 47A-2-208 through 47A-2-212.

47A-2-202. GENERAL DEFINITIONS. In this title, unless otherwise provided or the context requires a technical or other interpretation, the following definitions apply:

(1) "Annexation" means the joining of an area to a municipality.

(2) "Contiguous" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal limits or is separated from the municipal limits by a street or street right-of-way, a strip of unplatted land too narrow or small to be platted, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, lands owned by the state or federal government, or lands exempted from annexation under 47A-2-206.

(3) "Resident freeholder" means a person who maintains his residence on real property in which he holds an estate of life or inheritance or of which he is the purchaser of such an estate under a contract for deed, some memorandum of which has been filed with the county records administrator.

47A-2-203. JUDICIAL REVIEW. (1) Within 30 days following the passage of an annexation ordinance under authority of this part, any person owning property in the annexed area who believes that he will suffer material injury may file a petition in a district court seeking review of the action of the municipal governing body if:

(a) the municipal governing body failed to comply with a procedure set forth in this part; or

(b) the municipal governing body failed to meet requirements set forth as a part of that procedure and the requirements apply to his property.

(2) The petition shall state what exceptions are taken to the action of the municipal governing body and what relief the petitioner seeks. The petition shall be served upon the municipality in the manner provided for the service of civil process.

(3) Within 30 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the municipality shall transmit to the reviewing court:

(a) a transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth; and

(b) a copy of any report or other document required by the procedure used to annex the area.

(4) If two or more petitions for review are submitted to the court, the court may consolidate all the petitions for review at a single hearing.

(5) At any time before or during the review proceeding, any petitioner may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it considers proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(6) The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs and may take evidence intended to show either:

(a) that the statutory procedure was not followed; or

(b) that the requirements of the procedure used to annex the area have not been met.

(7) The court may affirm the action of the municipal governing body without change, or it may:

(a) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any petitioner; or

(b) remand the ordinance to the municipal governing body for amendment of the boundaries of the area in question to conform to the requirements of the procedure used if it finds the requirements have not been met; but the court cannot remand the ordinance to the municipal governing body with directions to add to the municipality an area which was not included in the notice of public hearing.

(8) If the municipal governing body fails to take action in accordance with the court's instructions upon remand within 3 months from receipt of the instructions, the annexation proceeding is considered void.

(9) Any party to the review proceedings, including the municipality, may appeal to the supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal; however, the district court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the municipality without regard to any part of the area concerning which an appeal is being made.

(10) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the district court or the supreme court on the effective date of the ordinance, then the ordinance shall be considered amended to make the effective date with respect to the area the date of the final judgment of the district or supreme court, whichever is appropriate, or the date the municipal governing body completes action to make the ordinance conform to the court's instructions in the event of remand.

47A-2-204. ANNEXATION RECORDED. Whenever the limits of a municipality are enlarged in accordance with the provisions of this part, it shall be the duty of the chief executive or administrative officer of the municipality to record an accurate map of the annexed territory, together with a certified copy of the ordinance in the office of the records administrator of the county or counties in which the annexed territory is situated and with the department of community affairs.

47A-2-205. ANNEXATION BY ACCEPTANCE OF FINAL PLAT. (1) Whenever an area contiguous to a municipality is subdivided as provided in "The Montana Subdivision and Platting Act", the subdivider may, after filing the final plat, submit the final plat to the municipal governing body with a request that the area be annexed to the municipality.

(2) The municipal governing body may either reject the request or adopt a resolution of intent to annex the area.

(3) If the municipal governing body adopts a resolution of intent to annex the area, it shall set a date and time for a public hearing and give notice of the resolution and public hearing.

(4) Following the public hearing, the municipal governing body may adopt an ordinance annexing the area to the municipality, or it may refuse to annex the area.

47A-2-206. ANNEXATION OF WHOLLY SURROUNDED AREA. (1) Any area wholly surrounded by a municipality may be annexed to the municipality in the following manner:

(a) The municipal governing body shall find by resolution that it will be in the best interests of the municipality and its inhabitants and of the inhabitants, if any, of the area to annex it to the municipality.

(b) After adoption of the resolution, the governing body shall set a date for a public hearing on the annexation of the area and give notice of the resolution and public hearing.

(c) Following the public hearing, the governing body may adopt an ordinance annexing the area.

(2) A municipality proceeding under this section may not annex an area used for agriculture or mining without the written consent of the owners.

47A-2-207. EXTENSION OF BOUNDARIES TO INCLUDE CERTAIN AREAS.

(1) Any tracts or parcels of land contiguous to a municipality may be annexed to the municipality and the limits of a municipality extended so as to include the annexed area in the following manner:

(a) The municipal governing body shall find by resolution that it will be in the best interests of the municipality and its inhabitants and of the inhabitants of tracts or parcels to be annexed to extend the municipal limits to include the annexed areas.

(b) The municipal governing body shall publish notice of the passage of the resolution and shall mail notice of the resolution to all resident freeholders in the area which the municipality proposes to annex. The notice shall include a statement that for a period of 20 days after the first publication of notice, written objections to the proposed extension of boundaries will be received at the offices of the municipality.

(c) At the first regular meeting of the municipal governing body after the expiration of 20 days from the last publication of notice, it shall consider all written objections received and if a

majority of the resident freeholders in the area to be annexed have not objected in writing, the governing body may adopt an ordinance extending the limits of the municipality to include the area.

(2) Whenever two or more adjacent tracts taken as a whole are contiguous to a municipality, they may be included in one resolution under subsection (1)(a) although one or more of the tracts taken alone may not be contiguous to the municipal limits then existing.

47A-2-208. INITIATION OF EXTENSION OF CORPORATE LIMITS. The governing body of any municipality may extend the municipal limits of the municipality under the procedure set forth in 47A-2-208 through 47A-2-212 upon the initiation of the procedure by the governing body itself; or, whenever the resident freeholders situated outside the municipal limits of any municipality, but contiguous thereto, desire to have real estate annexed to the municipality, they may file with the municipal governing body a petition bearing the signatures of more than 50% of the resident freeholders in the territory seeking annexation, requesting a resolution stating the intent of the municipality to consider annexation. Upon passage of the resolution, the municipal governing body shall follow the procedure in 47A-2-211. If the municipal governing body fails to act within 60 days, the petitioners may appeal to the district court under the procedure set down in 47A-2-203.

47A-2-209. PLANS TO PROVIDE SERVICES. A municipality exercising authority under 47A-2-208 through 47A-2-212 shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in 47A-2-211, prepare a report setting forth its plans to provide services to the annexed area. This report shall include:

(1) a map or maps of the municipality and adjacent territory to show the following information:

(a) the present and proposed municipal limits of the municipality;

(b) the present streets, major trunk watermains, sewer interceptors and outfalls and other utility lines, and the proposed extension of the streets and utility lines as required in subsection (3) of this section; and

(c) the general land-use pattern in the areas to be annexed;

(2) a statement showing that the area to be annexed meets the requirements of 47A-2-210; and

(3) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, the plans shall:

(a) provide a long-range plan for the extension of services and the acquisition of properties outside the municipal limits. This plan must show anticipated development a minimum of 5 years into the future showing on a yearly basis how the municipality plans to extend services and develop and add sections to the city.

(b) provide for the integration of existing subordinate service districts to the municipality;

(c) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as these services are provided within the rest of the municipality prior to annexation;

(d) provide for future extension of streets and of major trunk watermain, sewer outfall lines, and other utility services into the area to be annexed, so that when these streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure these services according to the policies in effect in the municipality for extending the services to individual lots or subdivisions;

(e) set forth a proposed timetable for construction of streets and utility lines, if extension of streets and water, sewer, or other utility lines into the area to be annexed is necessary; and

(f) provide a method to be set forth by which the municipality plans to finance extension of services into the area to be annexed. Included within this plan must be a methodology whereby the resident freeholders of the area to be annexed may vote upon any proposed capital improvements if general obligation bonds are to be issued. Should a negative vote be cast by over 50% of those resident freeholders in the area to be annexed in the election, the area shall not be annexed. If the area is serviced currently by adequate water and sewage services, streets, curb and gutters, and no capital improvements are needed to provide adequate services stipulated by this section, the municipality must provide the area to be annexed with a plan of how they propose to finance other services to be included within the district - mainly police protection, fire protection, garbage collection, street and street maintenance services, as well as continued utility service. In this annexation plan it must be clearly stated that the entire municipality intends to share the tax burden for these services. If so, the area may be annexed without a bond issue under the provisions of this act.

47A-2-210. STANDARDS TO BE MET BEFORE ANNEXATION CAN OCCUR.

(1) A municipal governing body may extend the municipal limits to include any area which meets the general standards of subsection (2) of this section.

(2) The total area to be annexed must meet the following standards:

(a) It must be contiguous to the municipal limits at the time the annexation proceeding is begun.

(b) No part of the area shall be included within the municipal limits of another incorporated municipality.

(c) It must be included within, and the proposed annexation must conform to, a general plan as prescribed in 47A-6-301.

(3) In fixing new municipal limits, a municipal governing body shall, wherever practical, use natural topographic features such as ridge lines, streams, and creeks as limits, and if a street is used as a limit, include within the municipality land on both sides of the street. The outside limit may not extend more than 200 feet beyond the right-of-way of the street.

47A-2-211. RESOLUTION OF INTENTION TO ANNEX -- PUBLIC HEARING NOTICE -- ACTION BY GOVERNING BODY AFTER HEARING. (1) The governing body of any municipality desiring to annex territory under the provisions of 47A-2-208 through 47A-2-212 shall first pass a resolution stating the intent of the municipality to consider annexation. The resolution shall describe the boundaries of the area under consideration and fix and give notice of a date for a public hearing on the question of annexation, the date for the public hearing to be not less than 30 days and not more than 60 days following passage of the resolution.

(2) The notice of public hearing shall:

(a) fix the date, hour, and place of the public hearing;

(b) describe clearly the boundaries of the area under consideration; and

(c) state that the report required in 47A-2-209 will be available in the office of the municipal official designated by the governing body at least 14 days prior to the date of the public hearing.

(3) At least 14 days before the date of the public hearing, the governing body shall approve the report provided for in 47A-2-209 and shall make it available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

(4) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in 47A-2-209. Following the explanation, any person residing or owning property in the territory described in the notice of public hearing and any resident of the municipality shall be given an opportunity to be heard.

(5) The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by 47A-2-209 and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of 47A-2-209. At any regular or special meeting held no sooner than 7 days following the public hearing and no later than 60 days following the public hearing, the governing body shall have authority to adopt an ordinance extending the municipal limits of the municipality to include all or any part of the area described in the notice of the public hearing which meets the requirements of 47A-2-210 of this part and which the governing body has concluded should be annexed. The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of 47A-2-210. The external boundaries of the area to be annexed shall be described by metes and bounds;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by 47A-2-209; and

(c) fix the effective date of annexation. The effective date of annexation may be fixed for any date within 12 months from the date of passage of the ordinance.

(6) From and after the effective date of the annexation ordinance, the newly annexed area and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the municipality and shall be entitled to the same privileges and benefits as other parts of the municipality. The newly annexed area shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a subordinate service district which has installed water, sewer, or other utilities or improvements, paid for by the residents of the subordinate service district, shall not be subject to that part of the municipal taxes levied for debt service for the first 5 years after the effective date of annexation.

(7) If a municipality is considering the annexation of two or more areas which are all contiguous to the municipal limits but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this title for the annexation of the areas.

47A-2-212. ANNEXATION ORDER. The governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes. This document shall be filed with the county in which the municipality to which the territory is sought to be annexed is situated. From and after the date of filing the document with the county or effective date of the ordinance, whichever is later, the annexation of the area shall be complete. Henceforth, the annexed area shall be a part of the municipal corporation, and the municipality to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

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CHAPTER 2, PART 3

COUNTY BOUNDARIES AND COUNTY SEATS

47A-2-301. COUNTY BOUNDARIES. (1) As provided by Article XI, section 2 of the Montana constitution, the counties of this state are those that existed on June 6, 1972.

(2) The boundaries of the counties of this state and their county seats are those heretofore set out in 16-201 through 16-263. These sections shall be filed with the secretary of state and department of community affairs, but they shall not be printed as part of the Montana Code Annotated.

(3) The department of community affairs shall certify copies of the foregoing sections to the records administrator of each county to be filed as official records of the county.

(4) The department of community affairs shall maintain a record of the boundaries and county seat, and whenever a county boundary or the location of a county seat is changed as provided in this chapter, the governing body shall file with the department of community affairs a document showing the changes made.

47A-2-302. INITIATION OF BOUNDARY ALTERATION OR CHANGE IN COUNTY SEAT. (1) Any alteration of county boundaries, including the merger of existing counties, or any change in the location of a county seat may be initiated by either a petition of the residents or a resolution of the governing body or bodies of the affected county or counties.

(2) The petition or resolution shall contain the following:

(a) a statement of purpose;

(b) either a description of the present and proposed boundaries of the affected counties or the present and proposed location of the county seat or both;

(c) a request for an election on the proposal if a petition, or a date for the election if a resolution;

(d) if existing counties are to be merged, the plan of government for the merged county; and

(e) the signatures of 15% of the electors in each affected county or the concurrence of the governing body of each affected county.

(3) The petition shall be filed with the elections administrator of each affected county who shall determine the adequacy

of the petition with regard to his respective county. If the petition is found to be adequate, the elections administrator shall certify it to the governing body of his respective county.

(4) Upon receipt of the certified petition, the governing bodies of the affected counties shall call a joint session at which the date of the election on the proposal shall be set.

47A-2-303. ELECTION. (1) The governing body of each affected county shall give notice of the date set for the election.

(2) The election shall be conducted and the results canvassed and returned as provided in 47A-3-513 for other questions submitted to a vote of the electors.

(3) No proposal shall become effective unless approved by a majority of those voting on the question in each county affected.

47A-2-304. EFFECT OF APPROVAL -- PUBLIC PROPERTY. (1) When an alteration of county boundaries transfers territory from one county to another, the county or counties from which the territory is removed shall transfer to the receiving county a percentage of the total assets of the transferring county equal to the percentage of the county's total taxable value represented by the territory being transferred.

(2) The receiving county shall assume liability for a percentage of the transferring county's total debts equal to the percentage of the total taxable value of the transferring county represented by the transferred territory.

(3) County trafficways and bridges shall not be considered county assets for the purposes of subsection (1). All of the transferring county's right, interest, or title to all trafficways and bridges in the transferred territory shall vest in the receiving county.

(4) Delinquent taxes and special assessments shall be considered assets of the county for the purposes of subsection (1). All delinquent taxes and special assessments attached to property being transferred shall be transferred to the receiving county which may collect them as provided by law.

47A-2-305. EFFECT OF TRANSFER -- TIME. (1) All alterations of county boundaries shall become effective on the assessment day following approval of the alteration except as provided in this section.

(2) An alteration of county boundaries which results in the merger of existing counties shall not take effect until the assessment day following the election of officers for the merged county. The election of new officials shall proceed as provided in chapter 3, part 1 of this title for the election of officials when a new form of government is adopted.

(3) A change in the location of the county seat shall be effective 60 days after approval.

CHAPTER 2, PART 4

CONSOLIDATION, CONFEDERATION AND MERGER

47A-2-401. METHODS OF CONSOLIDATION, CONFEDERATION AND MERGER. (1) A county and one or more municipalities may consolidate or confederate as provided in chapter 3, part 1 of this title.

(2) Two or more counties may merge to form a single county as provided in chapter 2, part 3.

47A-2-402. EFFECT OF CONSOLIDATION. (1) When a county and one or more municipalities consolidate, the consolidated local government replaces the participating county and municipality to form a single local government.

(2) The consolidated local government shall succeed to all rights, assets, and liabilities of the participating local governments.

(3) The consolidated local government shall have the powers and duties of both a county and a municipality.

(4) The consolidated local government shall have the form of government specified in the consolidation plan. The form may be amended as provided in chapter 3, part 1 of this title.

47A-2-403. EFFECT OF CONFEDERATION. (1) When a county and one or more municipalities confederate, a coordinated local government is created in which the county and the participating municipality or municipalities retain their separate identity and existence.

(2) The rights, assets, and liabilities of the confederating local governments shall be apportioned between the units as provided in the confederation charter.

(3) The confederated local governments shall have the powers and duties of both a county and a municipality apportioned as provided in the confederation charter.

(4) The confederated local governments shall be governed as provided in the confederation charter, which may be amended as provided in chapter 3, part 1 of this title.

47A-2-404. EFFECT OF COUNTY MERGER. (1) When two or more counties merge, a county is created as a single local government.

(2) The new county succeeds to all rights, assets, and liabilities of the merging counties.

(3) The new county has the powers and duties of a county.

(4) The new county shall have the form of government specified in the petition or resolutions calling for a merger. The form may be amended as provided in chapter 3, part 1 of this title.

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CHAPTER 3

LOCAL GOVERNMENT STRUCTURE AND ORGANIZATION

CHAPTER 3, PART 1

REVIEW, ADMENDMENT AND ADOPTION OF LOCAL GOVERNMENT FORM

47A-3-101. AMENDMENT OF FORM OR CHARTER. (1) A plan of government, or a charter, or an amendment to a plan of government or a charter may be proposed by:

- (a) a study commission as provided in 47A-3-108;
- (b) a resolution of the governing body; or
- (c) by petition of the electors.

(2) The resolution or petition shall set out fully the plan of government, or the charter, or the section or sections sought to be amended and the proposed amendment.

(3) An election on a plan of government, or charter, or an amendment proposed by resolution or petition shall be held at the next general election of the local government, unless the petition or resolution calls for a special election. If a special election is called for, the governing body shall set a date for the election to be held no sooner than 60 days or later than 90 days after passage of the resolution or filing of the petition.

(4) An election on a plan of government, or a charter, or an amendment shall be conducted and votes returned and canvassed in the manner provided by law for questions submitted to the electorate as provided in chapter 3, part 6 of this title.

(5) A plan of government, or charter, or an amendment requires the affirmative vote of a majority of those voting on the question for passage.

(6) The plan of government or charter takes effect in the manner set out in 47A-3-112 through 47A-3-116.

(7) An amendment becomes effective at the beginning of the local government's fiscal year after the election results are officially declared.

(8) Following the adoption of a plan of government, or a charter, or an amendment, the chief executive shall file a copy of the plan of government, or charter, or amendment with the department of community affairs.

47A-3-102. STUDY COMMISSIONS. (1) The purpose of a study commission is to study the existing plan, powers, and procedures for the delivery of services of a local government and to compare them with other plans, powers, and procedures available under the laws of the state of Montana.

(2) A study commission may be established only by an affirmative vote of the people. An election on the question of establishing a study commission shall be held whenever:

(a) the governing body of the local government calls for an election by resolution;

(b) a petition calling for an election is submitted to the commission; or

(c) 10 years have elapsed since the electors have voted on the recommendations of a study commission or on the question of establishing a study commission.

(3) The number of positions, not less than five, on the study commission shall be set out in the resolution or petition calling for the election on the question of establishing a study commission. If the election is called because 10 years have elapsed, the study commission shall consist of five members unless the local government commission by resolution declares that a larger number shall be elected.

(4) The question of establishing a study commission shall be submitted to the electors in substantially the following form:

Vote for one:

☐ For the establishment of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations thereon.

☐ Against the establishment of a study commission.

(5) The question of establishing a study commission requires an affirmative vote of a majority of those voting on the question for passage.

47A-3-103. ELECTION OF MEMBERS. If the question of establishing a study commission is approved, study commission members shall be elected in the following manner:

(1) There shall be placed on the ballot the names of study commission candidates who have filed declarations of nomination as provided in 23-3304. Candidates shall be listed without party or other designation or slogan. The secretary of state shall prescribe the ballot form for study commissions.

(2) Candidates for study commission positions shall be electors of the local government for which the study commission has been established.

(3) Those candidates receiving the highest number of votes shall be declared elected.

(4) The term of study commission members shall be for the duration of the commission's existence.

(5) If the number of study commissioners elected is not equal to the number required to be selected, the chairman of the governing body, with the confirmation of the governing body, shall appoint the additional study commissioner or commissioners within 20 days of the election. Subsequent vacancies shall be filled in the same manner.

47A-3-104. TIMETABLE FOR ELECTIONS. Dates for the required elections shall be set by the governing body within the following limits:

(1) An election on the question of establishing a study commission shall be held no sooner than 60 days and no later than 90 days after the passage of the resolution or the certification of the petition calling for an election on the question.

(2) An election to fill the positions on a local government study commission shall be held no sooner than 90 days or later than 120 days after the election establishing the study commission.

(3) Votes cast on the question of establishing a study commission and for electing study commission members shall be counted, canvassed, and returned by the elections administrator of the local government which the study commission is to examine.

(4) Except as otherwise provided in this chapter, each election conducted under this chapter shall be in the same manner as the election of other local officials.

47A-3-105. ORGANIZATION OF THE STUDY COMMISSION. (1) Not later than 10 days after all study commissioners are elected or appointed, the study commissioners shall meet and organize at a time which shall be set by the governing body of the local government which the study commission is to examine.

(2) At the first meeting of the study commission, the study commission may elect a temporary chairperson who will serve until a permanent chairperson is selected.

(3) Meetings of the study commission shall be held upon the call of the chairperson, vice-chairperson in the absence or inability of the chairperson, or a majority of the study commissioners. The chairperson shall announce the time and place of the meetings of the study commission.

(4) The study commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the study commission during regular office hours.

(5) A majority of the study commissioners shall constitute a quorum for the transaction of business, but no recommendation of a study commission shall have any legal effect unless adopted by a majority of the whole number of study commissioners.

(6) The study commission shall have the power to adopt rules for its own organization and procedure.

(7) Study commissioners shall receive no compensation other than for actual and necessary expenses incurred in their official capacity.

47A-3-106. ADMINISTRATIVE POWERS. A study commission shall have the following administrative powers:

(1) The study commission may employ and fix the compensation and duties of necessary staff. State, municipal, and county officers and employees, at the request of the study commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the study commission. If leave with pay is granted, they shall receive no other compensation, except mileage and per diem from the study commission.

(2) The study commission may establish advisory boards and committees, including on them, persons who are not study commissioners.

(3) The study commission may retain consultants.

(4) The study commission may contract and cooperate with other agencies, public or private, as it considers necessary for the rendition and affording of the services, facilities, studies, and reports to the study commission as will best assist it to carry out the purposes for which the study commission was established. Upon request of the chairperson of the study commission, state agencies, counties, other local governments, and the officers and employees thereof shall furnish the commission information as may be necessary for carrying out its function which may be available to or procurable by the agencies or units of government.

(5) All meetings of the study commission shall be open to the public. The study commission shall hold public hearings and community forums and may use other suitable means to disseminate information and stimulate public discussion of its purpose, progress, conclusions, and recommendations.

(6) The study commission may do any and all other things as are consistent with and reasonably required to perform its function under this chapter.

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47A-3-107. FINANCIAL ADMINISTRATION. (1) The study commission shall prepare a budget for each fiscal year it is in existence and submit it to the local governing body for approval.

(2) For the support of the study commission, for each fiscal year the study commission is in existence, the local government shall appropriate the equivalent of at least 1 mill. The local government may, in its discretion, provide additional funds.

(3) The study commission may apply for and accept available private, state, and federal moneys and may accept donations from any source.

(4) All moneys received by the study commission shall be deposited with the county or municipal finance administrator. The finance administrator is authorized to disburse appropriated moneys of the study commission on its order. Unexpended moneys of the study commission shall not revert to the general fund of the local government at the end of the fiscal year, but shall carry over to the study commission's appropriation for the following fiscal year. Upon termination of the study commission, unexpended moneys shall revert to the general fund of the local government.

47A-3-108. SCOPE OF STUDY COMMISSION'S RECOMMENDATIONS.

(1) A study commission elected to examine the government of a municipality may:

- (a) recommend amendments to the existing plan of government;
- (b) recommend any plan of government authorized by Title 47A, chapter 3, part 2;
- (c) draft a charter; or
- (d) recommend disincorporation.

(2) A study commission elected to examine the government of a county may:

- (a) recommend amendments to the existing plan of government;
- (b) recommend any plan of government authorized by Title 47A, chapter 3, part 2;
- (c) draft a charter;
- (d) recommend municipal-county consolidation;
- (e) recommend municipal-county confederation; or
- (f) in cooperation with a study commission in an adjoining county, recommend county merger.

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47A-3-109. FINAL REPORT. (1) Every study commission shall adopt a final report. The final report shall contain the following materials and documents, each signed by a majority of the study commission members:

(a) a certificate containing the "plan of government" of the existing form of local government;

(b) a certificate containing the "plan of government" of the proposed new form of local government, which must differ in some manner from the existing form of local government;

(c) a certificate containing the "plan of apportionment" of commissioner districts if districts are contained in the "plan of government";

(d) a certificate establishing the date of the special or general election at which the alternative form of government shall be presented to the electors and a certificate establishing the form of the ballot question or questions;

(e) a certificate establishing the dates of the first primary and general elections if the proposal is approved and establishing the effective date of the proposal if approved;

(f) a comparison of the existing plan and proposed plan of local government. It may contain a statement on the strengths and weaknesses of the existing and proposed plan of local government, and it may contain information that supports the adoption of the proposed plan and information that supports retention of the present plan; and

(g) any minority report signed by members of the commission who do not support the majority proposal.

(2) If the study commission proposes disincorporation, municipal-county consolidation, municipal-county confederation, or county merger, the final report shall contain the following additional material and documents:

(a) for disincorporation:

(i) a certificate of disincorporation instead of a plan of government; and

(ii) a recommended plan of disincorporation including suggested ordinances and service districts;

(b) for municipal-county consolidation, a consolidation plan which shall:

(i) provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;

(ii) provide for establishment of subordinate service districts.

(iii) provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local government consolidated under its proposal;

(iv) provide the official name of the consolidated local government;

(v) provide for the transfer, reorganization, abolition, or absorption of all existing boards, bureaus, commissions, agencies, and political subdivisions of the consolidated governments. Or the plan may grant the legislative body of the consolidated government the authority to transfer, reorganize, abolish, or absorb the entities with or without referendum requirements. This section shall not apply to authorities and excluded municipalities; and

(vi) include other provisions which the study commission elects to include and which are consistent with state law;

(c) for municipal-county confederation, a charter which shall:

(i) provide for a confederated system of county and municipal or town government;

(ii) authorize the comprehensive and simultaneous transfer of services to a system in which the county provides county-wide and area-wide services and municipalities provide local services;

(iii) permit future transfer of responsibility for provision of services;

(iv) establish a separate legislative body and chief administrative office for the county and each participating municipality in the confederated local government;

(v) provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;

(vi) provide for establishment of subordinate service areas;

(vii) provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments confederated under the charter;

(viii) provide the official name of the confederated local government;

(ix) provide for the transfer, reorganization, abolition, or absorption of all existing boards, bureaus, commissions, agencies, and political subdivisions of the confederated governments. Or the plan may grant the legislative bodies of the confederated government the authority to transfer, reorganize, abolish, or absorb the entities with or without referendum requirements. This section shall not apply to authorities and excluded municipalities.

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(x) include other provisions which the study commission elects to include and which are consistent with state law;

(d) for county merger a consolidation plan which shall:

(i) provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;

(ii) provide for establishment of subordinate service districts;

(iii) provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative plan;

(iv) provide the official name of the consolidated local government;

(v) provide for the transfer, reorganization, abolition, or absorption of all existing boards, bureaus, commissions, agencies, and political subdivisions of the consolidated governments except incorporated municipalities. Or the plan may grant the legislative body of the consolidated government the authority to transfer, reorganize, abolish, or absorb the entities with or without referendum requirements. This section shall not apply to authorities and municipalities; and

(vi) include other provisions which the study commissions elect to include and which are consistent with state law.

(3) The study commission shall file four copies of the final report with the department of community affairs.

47A-3-110. STUDY COMMISSION TIMETABLE. Each local study commission or combination of local study commissions shall:

(1) conduct one or more public hearings within 180 days of its organization for the purpose of gathering information regarding the current form, functions, and problems of the local government or governments;

(2) formulate, reproduce, and distribute within 365 days of its organization a tentative proposed report. No sooner than 30 days after the report is distributed, conduct one or more public hearings on the tentative report. The tentative report shall contain the same categories of information required to be included in the final report of the commission;

(3) adopt within 455 days of its organization the final report of the commission, and set the date for a special election on the question of adopting a new plan of government;

(4) prepare or cause to be prepared sufficient copies of its final report, including the full text of the proposed plan, any apportionment plan, and the study commission recommendation. The new report must be available to the electors not later than 30 days prior to the election on the issue of adopting the alternative plan. Copies of the final report may be distributed to electors or residents of the local government or governments affected;

(5) publish on 2 successive weeks in a newspaper of general circulation throughout the local government affected a summary of its findings and recommendations, together with the address of a convenient public place where the text of its proposal may be obtained. The summary shall include a comparison of the existing and proposed plans of government; and

(6) may prepare separate reports in addition to its final report. These reports may recommend consolidation of services and functions and potential areas for interlocal agreements.

47A-3-111. VOTE ON ALTERNATIVE FORM. (1) The study commission shall authorize the submission of the alternative plan of government to the voters at a special election held within 505 days of the study commission's organization. The special election may be held with a school, primary, general, or other election.

(2) A copy of the final report shall be certified by the study commission to the municipal or county records administrator within 455 days of the study commission's organization. The records administrator shall prepare and print notices of the special election.

(3) Elections on the issue of adoption of a proposed plan of government by a local government shall be conducted, returned, and canvassed and the result declared in the same manner as provided by law in respect to initiatives and referenda. The cost of the election shall be paid for by the local government. The affirmative vote of a simple majority of those voting on the question shall be required for adoption.

(4) In any election involving the question of consolidation or confederation, each question shall be submitted to the electors in the county and shall require an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There shall be no requirement for separate majorities in local governments voting on consolidation or confederation.

(5) In any election involving the question of county merger, the questions shall be submitted to the electors in the counties affected and shall require a majority of the votes cast on the questions in each affected county for adoption.

(6) (a) The question of adopting the form of government proposed by the study commission shall be submitted to the electors in substantially the following form:

Vote for one:

☐ For adoption of the (self-government charter or plan of government) proposed in the report of the (insert name of local government) local government study commission.

☐ For the existing form of government.

(b) The whole number of ballots shall be divided into two equal sets. No more than one set shall be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.

(7) A proposed plan shall be submitted to the voters as a single question, except that the sub-options within the alternative plan of local government authorized in Title 47A, chapter 3, part 2, and the sub-options authorized in a charter may be submitted to the electors as separate questions. No study commission may submit more than three separate sub-options, and no sub-option shall contain more than two alternatives. If a sub-option is submitted to the voters, only the ballot alternatives within that sub-option receiving the highest number of affirmative votes shall be considered approved and included in the alternative form of government. The question of adopting a sub-option shall be submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

☐ Shall be elected for a term of 4 years.

☐ Shall be appointed for a term of 4 years by the chairperson of the local governing body.

47A-3-112. GENERAL TRANSITION. (1) If the electors disapprove the proposed new form of local government, the local government shall retain its existing form.

(2) (a) An alternative plan of local government approved by the electors shall take effect when the new officers take office as provided in 47A-3-115, except as otherwise provided in this title and any charter or consolidation plan. A consolidation or confederation plan similarly adopted by the electors shall take effect in the same manner.

(b) Provisions creating offices and establishing qualifications for office any "apportionment plan" shall become effective immediately for the purpose of electing officials.

(3) (a) A copy of the existing or proposed "plan of government" ratified by the voters and any "apportionment plan" or "consolidation plan" shall be certified by the chairperson of the study commission and filed by the study commission with the department of community affairs and the records administrator.

(b) The approved plan filed with the department of community affairs shall be the official plan and shall be a public record open to inspection of the public and judicially noticeable by all courts.

(4) (a) All ordinances in effect at the time the new form of government becomes effective shall continue in effect until repealed or amended in the manner provided by law.

(b) Within 2 years after ratification of the consolidation, the governing body of the consolidated local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county and municipalities at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

(5) The adoption of a new plan of government shall not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

(6) The study commission shall prepare an advisory plan for orderly transition to a new plan of local government. The transition plan may propose necessary ordinances, plans for consolidation of services and functions, and a plan for reorganizing boards, departments, and agencies.

(7) The governing body of a local government may enact and enforce ordinances to bring about an orderly transition to the new plan of government, including transfer of powers, records, documents, properties, assets, funds, liabilities, or personnel which are consistent with the approved plan and necessary or convenient to place it into full effect. Where any question arises concerning the transition which is not provided for, the governing body may provide for the transition by ordinance, rule, or resolution not inconsistent with this title.

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47A-3-113. TRANSITION -- OFFICERS AND EMPLOYEES. (1)
The members of the governing body, holding office on the date the new plan of government is adopted by the electors of the local government, shall continue in office and in the performance of their duties until the governing body authorized by the plan has been elected and qualified, whereupon the prior governing body is abolished.

(2) All other employees holding offices or positions, whether elective or appointive, under the government of the county or municipality shall continue in the performance of the duties of their respective offices and positions until provisions shall be made for the performance or discontinuance of the duties, or the discontinuance of the offices or positions.

47A-3-114. ELECTION OF NEW OFFICIALS. (1) Within 10 days of an election at which the new plan of government is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials required by the new form of government.

(2) The order shall specify the next scheduled primary and general elections or a date for the primary election not more than 70 days or less than 50 days after the election approving the new form and a date for the general election 60 days after the primary.

(3) The election shall be conducted, the vote canvassed, and the result declared in the manner provided by law for local government elections.

47A-3-115. ORGANIZATION OF THE GOVERNING BODY. (1)
The first meeting of a new governing body for the new plan of government shall be held at 10 a.m. 60 days after the election of the new officers. At that time, newly elected members shall take the oath of office prior to assuming the duties of office.

(2) If the terms of the commissioners are to be overlapping, they shall draw lots to establish their respective terms of office.

47A-3-116. JUDICIAL REVIEW. Judicial review to determine the validity of the procedures whereby any charter or alternative plan of government is adopted may be had by petition of 10 or more registered voters of the local government brought within 60 days after the election at which the charter or plan of government, revision, or amendment is approved. If no petition is filed within that period, compliance with all the procedures required by this chapter and the validity of the manner in which the charter or plan of government was approved shall be conclusively presumed. It shall be presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or plan of government shall not be considered invalid on account of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

ALTERNATIVE FORMS OF LOCAL GOVERNMENT

Title 47A, ~~Part~~ Chapter 3, ~~Chapter~~ Part 2

47A-3-201. Declaration of purpose. (1) The purpose of this chapter is to comply with Article XI, section 3 (1), of the Montana constitution, which provides: "The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question."

(2) This chapter establishes the alternative forms of government for cities, towns, counties, and consolidated governments. This chapter shall be liberally construed to facilitate the adoption of a form of local government. The procedure to adopt, amend, or abandon these forms is provided in sections 16-5101 et seq.

47A-3-202. Adoption of alternative forms. Each local government in the state shall adopt one of the alternative forms of government provided for in this chapter including one of each sub-option authorized: the commission-executive form (which may also be called the "council-executive", the "council-mayor", or the "commission-mayor" form), the commission-manager form (which may also be called the "council-manager" form), the commission form, the commission-chairman form, the town meeting form, or the charter form.

47A-3-203. Commission-executive form. (1) The commission-executive form (which may be called the "council-executive", the "council-mayor", or the "commission-mayor" form) consists of an elected commission (which may be referred to as the "council" and one elected executive (who may be referred to as the "mayor") who is elected at large.

(2) The executive shall:

- (a) enforce laws, ordinances, and resolutions;
- (b) perform duties required of him by law, ordinance, or resolution;
- (c) administer affairs of the local government;
- (d) carry out policies established by the commission;
- (e) recommend measures to the commission;
- (f) report to the commission on the affairs and financial condition of the local government;
- (g) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;
- (h) report to the commission as the commission may require;
- (i) attend commission meetings and may take part in discussions;
- (j) execute the budget adopted by the commission;
- (k) appoint, with the consent of the commission, all members of boards; except, the executive may appoint without the consent of the commission temporary advisory committees established by the executive.

(3) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The executive:

(i) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the executive; or

(ii) may appoint one or more administrative assistants to assist him in the supervision and operation of the local

government. Such administrative assistants shall be answerable solely to the executive.

(b) The executive may:

(i) appoint and remove all employees of the local government; or

(ii) appoint and remove, with the consent of a majority of the commission, all employees of the local government; or

(iii) appoint, with the consent of a majority of the commission, all department heads. The executive may remove department heads and may appoint and remove all other department employees; or

(iv) appoint and remove, with the consent of a majority of the commission, all department heads. The executive may appoint and remove all other employees of the local government.

(c) The executive may:

(i) veto ordinances and resolutions, subject to override by a majority plus one of the whole number of the commission; or

(ii) veto ordinances and resolutions, subject to override by a two-thirds vote of the commission; or

(iii) sign all ordinances and resolutions with no veto power.

(d) The executive may:

(i) prepare the budget and present it to the commission for adoption; or

(ii) prepare the budget in consultation with the commission and department heads.

(e) The executive may:

(i) exercise control and supervision of the administration of all departments and boards; or

(ii) exercise control and supervision of all departments and boards to the degree authorized by ordinance of the commission.

(f) A financial officer (who may be called the "treasurer"):

(i) shall be elected; or

(ii) shall be appointed by the executive with the consent of the council; or

(iii) shall be selected as provided by ordinance; or

(iv) may, at the discretion of the commission, be selected as provided by ordinance.

(g) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(h) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(i) The commission shall have a chairman who shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

(ii) selected as provided by ordinance.

(j) The presiding officer of the commission shall be:

(i) the chairman of the commission who may vote as other members of the commission; or

(ii) the executive who may vote as the commissioners; or

(iii) the executive who shall decide all tie votes of the commission, but shall have no other vote. The chairman of the commission shall preside if the executive is absent; or

(iv) the executive, but he may not vote.

(k) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(1) The size of the commission, which shall be a number not less than three (3), shall be established when the form is adopted by the voters, and;

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(m) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(4) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers.

47A-3-204. Commission-manager form. (1) The commission-manager form (which may be called the "council-manager" form) consists of an elected commission (which may be called the "council") and a manager appointed by the commission who shall be the chief administrative officer of the local government. The manager shall be responsible to the commission for the administration of all local government affairs placed in his charge by law, ordinance, or resolution.

(2) The manager shall be appointed by the commission for an indefinite term on the basis of merit only, and removed only by a majority vote of the whole number of the commission.

(3) The manager shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform the duties required of him by law, ordinance, or resolution;

(c) administer the affairs of the local government;

(d) direct, supervise, and administer all departments,

agencies and offices of the local government unit except as otherwise provided by law or ordinance;

(e) carry out policies established by the commission;

(f) prepare the commission agenda;

(g) recommend measures to the commission;

(h) report to the commission on the affairs and financial condition of the local government;

(i) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(j) report to the commission as the commission may require;

(k) attend commission meetings and may take part in the discussion, but he may not vote;

(l) prepare and present the budget to the commission for its approval and execute the budget adopted by the commission;

(m) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance. Employees appointed by the manager and his subordinates shall be administratively responsible to the manager;

(n) appoint members of temporary advisory committees established by the manager.

(4) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of his subordinates are empowered to appoint.

(5) Except for the purpose of inquiry or investigation under this title, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager, solely through the manager, and neither the commission nor its members may give orders to any such employee, either publicly or privately.

(6) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) All members of boards, other than temporary advisory committees established by the manager, shall be appointed by:

- or
- (i) the chairman with the consent of the commission;
 - (ii) the manager with the consent of the commission; or
 - (iii) the commission.
- (b) The commission shall be:
- (i) elected at large; or
 - (ii) elected by districts in which candidates must reside and which are apportioned by population; or
 - (iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or
 - (iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.
- (c) Local government elections shall be conducted on a:
- (i) partisan basis as provided in this title; or
 - (ii) nonpartisan basis as provided in this title.
- (d) The chairman of the commission shall be:
- (i) elected by the members of the commission from their own number for a term established by ordinance; or
 - (ii) elected by the qualified electors for a term of office; or
 - (iii) selected as provided by ordinance.
- (e) Commission members shall be elected for:
- (i) concurrent terms of office; or
 - (ii) overlapping terms of office.
- (f) The size of the commission, which shall be a number of not less than three (3), shall be established when the form is adopted by the voters, and:
- (i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(g) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(7) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers.

47A-3-205. Commission form. (1) The commission form consists of an elected commission (which may also be called the "council") and other elected officers as provided in this section. All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission. The commission shall appoint the heads of departments and other employees, except for those appointed by other elected officials. Cities and towns which adopt this form may distribute by ordinance the executive and administrative powers and duties into departments headed by individual commissioners.

(2) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(b) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(c) The chairman of the commission, who may be referred to as the "mayor", shall be the presiding officer of the commission. All members of boards and committees shall be appointed by the chairman with the consent of the commission. The chairman shall be recognized as the head of the local government unit and may vote as other members of the commission. The chairman shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

(ii) selected as provided by ordinance; or

(iii) elected directly by the voters for a term established by ordinance.

(d) The commission:

(i) shall appoint one or more administrative assistants to assist them in the supervision and operation of the local government; or

(ii) may appoint one or more administrative assistants to assist them in the supervision and operation of the local government.

(e) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(f) The size of the commission, which shall be a number of not less than three (3), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(g) The term of office of elected officials may not exceed four (4) years, except the term of office for commissioners in counties adopting the form authorized by Article XI, section 3 (2), of the Montana constitution, may not exceed six (6) years. Terms of office shall be established when the form is adopted by the voters.

(3) In county and consolidated local governments, the plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below. The officers shall have the powers and duties established by ordinance. After the establishment of any office, the commission may consolidate, as provided by law, two or more of the offices.

(a) A legal officer (who may be called the "county attorney"):

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(b) A law enforcement officer (who may be called the "sheriff"):

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(c) A clerk and recorder:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local

government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(d) A clerk of district court:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(e) A treasurer:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(f) A surveyor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(g) A superintendent of schools:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(h) An assessor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(i) A coroner:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(j) A public administrator:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(k) An auditor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(4) Local governments that adopt this form shall have general government powers.

47A-3-206. Commission-chairman form. (1) The commission-chairman form consists of an elected commission (which may also be referred to as the "council"), and a commission chairman (who may also be referred to as "mayor" or as "president") elected by the members of the commission from their own number.

(2) The commission chairman (who may also be referred

to as "mayor") shall be elected by the members of the commission from their own number to serve at the pleasure of the commission. He shall: be the presiding officer of the commission, be recognized as the head of the local government unit, have the power to vote as other members of the commission, be the chief executive officer of the local government, and:

- (a) enforce laws, ordinances, and resolutions;
- (b) perform duties required of him by law, ordinance, or resolution;
- (c) administer the affairs of the local government;
- (d) direct, supervise, and administer all departments, agencies, and offices of the local government, except as otherwise provided by law or ordinance;
- (e) carry out policies established by the commission;
- (f) prepare the commission agenda;
- (g) recommend measures to the commission;
- (h) report to the commission on the affairs and financial condition of the local government;
- (i) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;
- (j) report to the commission as the commission may require;
- (k) attend commission meetings and may take part in discussions;
- (l) execute the budget adopted by the commission;
- (m) appoint with the consent of the commission all members of boards and committees; except the chairman may appoint without the consent of the commission temporary advisory committees established by the chairman;
- (n) appoint with the consent of a majority of the commission all department heads. The chairman may remove department heads and may appoint and remove all other employees;
- (o) prepare the budget and present it to the commission for adoption;
- (p) exercise control and supervision over the administration of departments and boards.

(3) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(b) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(c) The commission chairman:

(i) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the chairman; or

(ii) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the chairman.

(d) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(e) The size of the commission, which shall be a number of not less than five (5), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(f) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(4) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers.

47A-3-207. Town meeting form. (1) The town meeting form consists of an assembly of the qualified electors of a town (known as a town meeting), an elected town chairman, who shall be a qualified elector, and an optional elected town meeting moderator. The town meeting form may be adopted only by incorporated cities or towns of less than two thousand (2,000) persons as determined by the most recent decennial census as conducted by the United States bureau of the census unless a more recent enumeration of inhabitants be made by the state, in which case such enumeration shall be used for the purposes of this section. Any unit of local government which adopts this form may retain it even though its population increases to more than two thousand (2,000).

(2) All legislative powers of the town shall vest in the town meeting. The town meeting may enact rules, resolutions, and ordinances.

(3) (a) Towns adopting this form shall convene an annual town meeting on the first Tuesday of March. Special town meetings may be called by the town chairman or upon petition of ten percent (10%) of the qualified electors of the town, but in no case by less than ten (10) qualified electors.

(b) All qualified electors of the town may attend the town meeting, take part in the discussion and vote on all matters coming before the town meeting. Others may attend but shall not vote nor take part in the discussion except by a majority vote of the town meeting.

(c) A quorum shall consist of at least ten percent (10%) of the qualified electors of the town but a higher quorum requirement may be established by a majority vote of the town meeting.

(d) The election of town officials shall be

nonpartisan and shall be by a plurality of those qualified electors present and voting. All other voting in the town meeting shall be by a simple majority of those qualified electors present and voting.

(e) Election of officials shall be by secret ballot. Other voting shall be by secret ballot upon the request of at least five members of the town meeting.

(4) An agenda of the town meeting and a list of all elective and appointive offices to be filled shall be prepared by the town chairman who shall post notice at least two (2) weeks prior to the convening of all annual and special town meetings. Upon written petition of at least ten percent (10%) of the qualified electors of the town, but not less than ten (10) qualified electors, the town chairman shall insert a particular item or items in the agenda for the next annual or special town meeting. The town meeting agenda may include an item entitled "other business" under which any matter may be considered by the town meeting except no matter dealing with finance or taxation shall be considered under "other business".

(5) The town meeting shall elect a town chairman for a term of not less than one (1) year or more than two (2) years. An unexpired term of a town chairman shall be filled at the next annual or special town meeting.

(6) The town chairman shall be the chief executive officer of the town and he shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required of him by law, ordinance, or resolution;

(c) administer the affairs of the town;

(d) prepare the town meeting agenda;

(e) attend all annual and special town meetings;

(f) recommend measures to the town meeting;

(g) report to the town on the affairs and financial condition of the town;

(h) execute bonds, notes, contracts, and written obligations of the town, subject to the approval of the town;

(i) appoint, with the consent of the town meeting, members of all boards and appoint and remove all employees of the town;

(j) prepare the budget and present it to the town meeting for adoption;

(k) exercise control and supervision of the administration of all departments and boards;

(l) carry out policies established by the town meeting.

(7) Compensation of the town chairman shall be established by ordinance but shall not be reduced during the current term of the town chairman.

(8) Permanent committees to advise the town chairman and/or the town meeting may be established and dissolved by ordinance. The town chairman may establish temporary committees to advise him.

(9) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The town meeting shall:

(i) elect a town meeting moderator for a term of one (1) year who shall be the presiding officer of all annual and special town meetings but who shall have no other governmental powers; or

(ii) designate the town chairman as presiding officer of all annual and special town meetings.

(b) The town chairman:

(i) shall appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town. The administrative assistant shall be answerable solely to the town chairman and the town chairman may delegate powers to the administrative assistant at his discretion; or

(ii) may appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town. The administrative assistant shall be answerable solely to the town chairman and the town chairman may delegate powers to the administrative assistant at his discretion.

(10) The first agenda of the first town meeting following the adoption of this form shall be established by the local study commission. At that town meeting the chairman of the local study commission shall preside over the election of the presiding officer of the town after which the presiding officer of the town shall preside.

(11) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

- (a) general government powers; or
- (b) self-government powers.

47A-3-208. Charter form. (1) The purpose of this section is to comply with Article XI, section 5 (1), of the Montana constitution, which provides: "(1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body."

(2) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

(3) A charter form of government shall possess self-government powers.

(4) Charter form of government shall be established by a charter which is a written document defining the powers, structures, privileges, rights, and duties of the unit of local government and limitations thereon.

(5) The charter shall provide for an elected legislative body, called a commission or council, or shall provide for a legislative body comprised of all qualified electors. For elected legislative bodies the charter shall specify the number of members thereof, their term of office, election on a partisan or nonpartisan basis, the grounds for their removal, and the method for filling vacancies.

(6) The charter shall provide for the nomination and election of commissions at-large, or by districts in which candidates must reside and which are apportioned by population, or by a combination of districts in which candidates must reside and which are apportioned by population and at-large.

(7) The charter shall specify which official of the local government will be the chief administrative and executive officer, the method of his selection, his term of office, except that it may be at the pleasure of the selecting authority if such officer is not elected by popular vote, the grounds for his removal, and his powers and duties. Notwithstanding the foregoing, the charter may allocate the chief executive and the chief administrative

functions among two or more officials specified as above, or the charter may provide that chief executive and administrative functions of the local government will be performed by one or more members of the legislative body.

(8) The charter may establish other legislative, administrative, and organizational structures.

(9) A charter form of government shall have such officers, departments, boards, commissions, and agencies as are established in the charter, by local ordinance, or required by state law.

(10) Charter provisions may not conflict with the provisions of Title 47-A, Part 7 which establish statutory limitations on the powers of self-government units.

(11) Charter forms are subject to state laws establishing election, initiative and referendum procedures and charters shall not contain provisions establishing election, initiative and referendum procedures.

(12) The charter shall not contain provisions establishing or modifying local court systems.

(13) The enumeration of powers in a charter shall not be construed as a limitation or prohibition on the residual or self-governing powers granted by the constitution.

(14) The charter may contain prohibitions on the exercise of power by a unit of local government.

(15) The charter may include such provisions as may be necessary to permit an orderly transition to the new form of government.

(16) The charter shall specify the date on which the charter will take effect, except that provisions may be made for temporary partial effectiveness consistent with an orderly transition of government.

(17) The listing of charter provisions in this section shall not be construed to prevent the inclusion of additional provisions in charters.

(18) A charter may be amended only as provided by state law.

History: Enacted Sec. 1, Chap. 344, S.L. 1975.
Effective May 2, 1977.

CHAPTER 3, PART 3

LEGISLATIVE ORGANIZATION AND PROCEDURE

47A-3-301. GENERAL POWER. The legislative power of a local government is vested in the governing body.

47A-3-302. PUBLIC PARTICIPATION. (1) The governing body shall allow public participation in its deliberations subject to the procedural rules as it may by resolution establish.

(2) All documents and records of the governing body shall be public records. They shall be available to the public for examination and copying at the local government offices during regular business hours.

(3) All meetings shall be open to the public except that the public may be excluded by a majority vote when the governing body considers the hiring, discharge, or discipline of local government employees or when it considers matters of purchasing, competition, or bargaining which if made public might adversely affect the financial interests of the local government. Final action must be taken in open session and recorded in the minutes.

(4) Personal records, medical records, and other records which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public, unless the person they concern requests they be made public.

47A-3-303. COMPOSITION, QUALIFICATION, AND VACANCIES. (1) The governing body shall be composed of the number of members provided for in the plan of government adopted by the electors.

(2) Any elector of the local government shall be eligible for election or appointment to the governing body if he meets the district residence requirements imposed by the local government.

(3) In the event of a vacancy, except as otherwise provided by charter, the governing body shall by majority vote of the remaining members appoint a qualified person to fill the vacancy until the next local government election at which time the remaining term shall be filled by election.

(4) Before taking office each member of the governing body shall take and subscribe the oath or affirmation set out in Article III, section 3 of the Montana constitution.

(5) Any member of a governing body who loses eligibility for election to his seat on the governing body shall immediately forfeit his office. Any member of a governing body who, without excuse

DRAFT

accepted by the governing body, fails to attend two consecutive regularly scheduled meetings of the governing body, or who absents himself from the local government continuously for 30 days without consent of the governing body, may be removed from office by a majority vote of the whole governing body.

47A-3-304. PROCEDURE. (1) The governing body shall meet once a month at a designated time and place except that more frequent meetings may be required by ordinance.

(2) An emergency meeting may be called by the chief executive, the chairperson of the governing body, or one-third of the membership of the governing body on 24-hour notice, except that if a majority of the members of the governing body waive notice in writing an emergency meeting may be held without notice.

(3) A majority of the governing body constitutes a quorum and is necessary to conduct any business.

(4) Action by the governing body, including the adoption of ordinances and resolutions, requires a majority vote of those members present.

(5) All action by the governing body shall be by ordinance, resolution, or motion.

(a) Ordinances may be amended and repealed only by ordinance.

(b) Resolutions may be amended and repealed only by resolution.

(c) All ordinances and resolutions are subject to initiative and referendum as provided in chapter 3, part 5 of this title.

(6) Contracts except interlocal agreements shall be entered into by resolution.

(7) Interlocal agreements shall be adopted by ordinance.

(8) The governing body shall provide for the keeping of written minutes which include the final vote on each ordinance or resolution indicating the vote of each individual member on the question.

(9) An agenda shall be posted and made available 24 hours prior to any regular meeting. The agenda may include an item entitled "other business" under which any matter may be considered by the governing body; except no matter dealing with finance or taxation shall be considered under "other business".

(10) The governing body may adopt by resolution additional rules not in conflict with this part governing its organization and procedure.

47A-3-305. CLERK AND STAFF. (1) The governing body may appoint a person to serve as clerk of the governing body. The person appointed may be an employee of the executive branch.

(2) The governing body may employ additional staff.

47A-3-306. MOTIONS. Actions previously authorized by ordinance or resolution may be approved by motion.

47A-3-307. ORDINANCE REQUIREMENTS. (1) All ordinances shall be submitted in writing in the form prescribed by resolution of the governing body.

(2) No ordinance passed shall contain more than one comprehensive subject which shall be clearly expressed in its title; except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 20 days apart. After the first adoption and reading it must be posted and copies made available to the public.

(4) In the event of an emergency, the governing body may waive the 20-day waiting period and the second reading. An ordinance passed in response to an emergency shall recite facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval.

(5) After passage and approval, all ordinances shall be signed by the chairperson of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

(6) No ordinance other than an emergency ordinance shall be effective until 30 days after second and final adoption. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency.

(7) If the plan of government allows the executive to veto an ordinance, this power must be exercised prior to the next regularly scheduled meeting of the governing body. If the executive vetoes an ordinance, the governing body must act at its next regularly scheduled meeting to either override or confirm the veto. If the veto is overridden or the executive fails to act, the ordinance shall take effect.

(8) There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval; except when a code is adopted by reference. When a code is adopted by reference, the date and source of the code shall be entered.

(9) No later than 1980 and at 5-year intervals thereafter ordinances shall be compiled into a uniform code and published.

47A-3-308. ADOPTION AND AMENDMENT OF CODES BY REFERENCE.

(1) Any local government may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code, or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. Notice of the intent to adopt a code by reference shall be published after first reading and prior to final adoption of the code. At least one copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the clerk of the governing body and there kept available for public use, inspection, and examination. The filing requirements herein prescribed shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the clerk of the governing body for a period of 30 days prior to final adoption of the ordinance which incorporates the code, portion, or amendment by reference.

(2) The governing body may adopt or amend a code by reference by an emergency ordinance and without notice. The emergency ordinance is automatically repealed 90 days following its adoption and cannot be reenacted as an emergency ordinance.

(3) The process for repealing an ordinance which adopted or amended a code by reference shall be the same as for repealing any other ordinance.

(4) In a local government that has adopted codes by reference pursuant to subsection (1), the chief executive may adopt administrative regulations which incorporate by reference subsequent changes and amendments thereof, properly identified as to date and source, that have been adopted by the agency or association which promulgated the code if the chief executive finds that the changes and amendments conform to nationally recognized standards, accepted engineering practices, or state and national model codes.

(5) Any administrative regulations which incorporate code amendments by reference shall become effective upon the expiration of 60 calendar days or after the fourth official meeting of the governing body following the promulgation of the regulation, whichever is later, unless within that period of time a resolution disapproving the administrative regulation shall have been adopted by the governing body.

(6) In addition to complying with all requirements for the issuance of administrative regulations by the chief executive, the filing requirement of subsection (1) of this section shall be complied with in adopting amendments to codes.

(7) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion,

DRAFT

or amendment, or any provision thereof separately, and no part of any penalty shall be incorporated by reference.

(8) For purposes of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state or any agency thereof; and shall include specifically, but shall not be limited to: building codes, plumbing codes, electrical wiring codes, health or sanitation codes, fire prevention codes, inflammable liquids codes, together with any other code which embraces rules pertinent to a subject which is a proper local government legislative matter.

47A-3-309. PENALTY FOR VIOLATION OF ORDINANCE. A local government with general government powers may fix penalties for the violation of an ordinance which do not exceed a fine of \$500 or 6 months imprisonment or both the fine and imprisonment.

47A-3-310. RESOLUTION REQUIREMENTS. (1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may be submitted and adopted at a single meeting of the governing body.

(3) If the plan of government allows the executive to veto resolutions, this power must be immediately exercised at the same meeting. If the executive fails to act, the resolution shall be approved. If the executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto.

(4) After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

(5) All resolutions shall be immediately effective unless a delayed effective date is specified.

47A-3-311. INTERLOCAL AGREEMENTS. (1) Any one or more local governments or public agencies may contract with any one or more other local governments or public agencies to perform any administrative service, activity, or undertaking which any of the public agencies entering into the contract is authorized by law to perform.

(2) In addition, and unless specifically prohibited by law or charter, a local government may contract with one or more political subdivisions of this or any other state or public agencies to:

(a) cooperate in the exercise of any function, power, or responsibility;

(b) share the services of any officer, department, board, employee, or facility; and

(c) transfer or delegate any function, power, responsibility, or duty.

(3) An interlocal agreement shall be authorized and approved by the governing body of each party to the agreement, shall set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties, and shall specify the following:

(a) its duration;

(b) the precise organization, composition, and nature of any separate legal entity created;

(c) the purpose or purposes of the interlocal agreement;

(d) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget;

(e) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination. The method or methods for termination shall include a requirement of 6 months written notification of the intent to withdraw by the governing body of the public agency wishing to withdraw.

(f) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on the joint board;

(g) the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking; and

(h) any other necessary and proper matters.

(4) Every agreement made shall, prior to and as a condition precedent to its final adoption and performance, be submitted to the county civil attorney who shall determine whether the agreement is in proper form and compatible with the laws of the state of Montana. The civil attorney shall approve any agreement submitted to him unless he finds it does not meet the conditions set forth in this section and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement within 30 days of its submission shall constitute approval.

DRAFT

(5) Every agreement including the state or a state agency shall, prior to and as a condition precedent to its final adoption and performance, be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of the state of Montana. The attorney general shall approve any agreement submitted to him unless he finds it does not meet the conditions set forth in this section and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement within 30 days of its submission shall constitute approval.

(6) Within 10 days after final approval and prior to commencement of performance, the interlocal agreement shall be filed with the county records administrator of the county or counties where the public agencies are located and with the department of community affairs.

47A-3-312. FRANCHISES. (1) A local government may grant a franchise for a term not to exceed 25 years. The franchise may be granted, amended, extended, or renewed only by ordinance.

(2) An ordinance granting a franchise shall state:

(a) the duration of the franchise;

(b) the rights and responsibilities of the franchisee and conditions thereon including performance bonds; and

(c) the amount to be paid for the franchise or the method by which the amount to be paid is to be calculated.

(3) An ordinance granting a franchise without election may be adopted only after notice and a public hearing and may not exceed 3 years.

(4) (a) No ordinance granting, amending, extending, or renewing a franchise for electrical, gas, or telephone utilities shall be effective until approved by the electors of the local government granting the franchise.

(b) The question of granting, amending, extending, or renewing a franchise shall be submitted to the electors in the same manner as other questions are submitted to the electors.

(c) The person seeking the franchise shall pay all costs of the franchise election.

(5) Utilities regulated by the public service commission have the right to use the trafficways of a local government upon payment of a reasonable permit fee and subject to reasonable terms and conditions with reasonable exceptions as determined by the governing body of the local government. A dispute as to whether the fees, terms, conditions, or exceptions are reasonable shall

DRAFT

be decided by the public service commission.

47A-3-313. INITIATIVE AND REFERENDUM. (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2) of this section, may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in this section.

(2) The powers of initiative and referendum shall not extend to property tax levies or general appropriation resolutions providing for the ordinary and current expenses of the local government.

(3) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If submitted prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(4) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(5) A petition or resolution for initiative or referendum shall:

(a) embrace only a single comprehensive subject; and

(b) set out fully the ordinance sought by petitioners, or in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment, or in the case of referendum, set out the ordinance sought to be repealed.

(6) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.

(a) If the governing body does not, within 60 days, take the proposed action, then the question shall be submitted to the electors. Before submitting the question to the electors, the governing body may direct that a suit be brought in district court by the local government to determine whether the petition is regular in form, has sufficient signatures, and whether the proposed action would be valid and constitutional.

(b) The complaint shall name as defendants not less than 10 nor more than 20 of the petitioners. In addition to the names of the defendants, to the caption of the complaint there shall be added the words: "and all petitioners whose names appear on the petition for an ordinance filed on the _____ day of _____, in

DRAFT

the year _____", stating the date of filing. The summons shall be similarly directed and shall be served on the defendants named therein, and in addition shall be published.

(c) If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2 year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative, at any time, to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

(7) (a) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the electors shall be voted on at the next regular election to be held in the local government unless:

(i) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election; or

(ii) the governing body calls for a special election on the question.

(b) If the adequacy of the petition is determined by the elections administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election, unless a special election is called.

(c) Whenever a measure is ready for submission to the electors, the elections administrator shall, in writing, notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of referendum, the ordinance sought to be repealed shall be published.

(d) The question shall be placed on the ballot giving the electors a choice between accepting or rejecting the proposal.

(e) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared, unless otherwise stated in the proposal.

47A-3-314. LEGISLATIVE ORGANIZATION AND PROCEDURE FOR TOWN MEETING. Except for the sections in this part on public participation (47A-3-306), interlocal agreements (47A-3-311), initiative and referendum (47A-3-313), and franchises (47A-3-312), the legislative body of a town meeting form of government is exempt from the provisions of this part, but the town meetings shall adopt rules of procedure governing its enactment of ordinances, resolutions, and taxes.

CHAPTER 3, PART 4

DEPARTMENTS, OFFICES, AUTHORITIES, BOARDS, SUBORDINATE SERVICE DISTRICTS AND LOCAL IMPROVEMENT DISTRICTS

47A-3-401. OFFICE OF THE CHIEF EXECUTIVE. (1) The chief executive may establish divisions in his office to carry out his assigned responsibilities.

(2) The chief executive may appoint temporary advisory committees. Confirmation by the governing body of temporary advisory committees is not required. Temporary advisory committees shall be abolished within one year of their creation.

47A-3-402. CREATION OF DEPARTMENTS. (1) Unless the adopted plan of government specifies department structure, the governing body shall prescribe by ordinance the office, department, and board structure of the local government, and may prescribe the functions of all offices, departments, and boards, except that no function required by this title may be discontinued.

(2) Two or more local governments may provide for joint departments. The joint departments shall be established by inter-local agreements.

(3) The governing body shall by ordinance assign any function mandated by state law to an appropriate office, department, or board.

(4) The functions assigned to the following positions by this title shall be allocated by ordinance among the departments and officers and employees of the local government:

- (a) records administrator;
- (b) elections administrator;
- (c) civil attorney;
- (d) finance administrator; and
- (e) budget administrator.

(5) The following county functions mandated by chapter 8 of this title shall be allocated by ordinance among the departments, officers, and employees of the county:

- (a) chief law enforcement administrator;
- (b) clerk of the district court;

DRAFT

- (c) assessor;
- (d) public prosecutor;
- (e) public administrator; and
- (f) superintendent of schools.

47A-3-403. DIRECTION OF DEPARTMENTS. (1) All departments shall be under the direction and supervision of the chief executive specified in the plan of government in force in the local government.

(2) Department heads shall be selected in the manner provided by the plan of government in force in the local government.

(3) If the plan so provides, or with the consent of the governing body, the chief executive may act as head of one or more departments.

(4) The governing body may provide for departments headed by elected officials.

(5) The governing body shall prescribe by ordinance the duties and powers of department heads.

(6) The governing body may prescribe by ordinance the qualifications for department heads.

(7) The governing body may require reports from the chief executive and for purposes of investigation may require reports from department heads and employees.

47A-3-404. BOARDS. (1) The governing body may by ordinance establish advisory or administrative boards. The ordinance creating a board shall specify the number of board members; terms of board members; whether board members shall be entitled to mileage, per diem, expenses and a salary; and any special qualifications for membership on the board in addition to those established by this title.

(2) An advisory board may be created to assist a department or subordinate service district. An advisory board may furnish advice, gather information, make recommendations, and perform other activities as may be necessary to comply with federal funding requirements. It does not have the power to administer programs or set policy.

(3) An administrative board may be assigned responsibility for a department or a subordinate service district.

(4) An administrative board may have administrative powers as granted by ordinance, except that it may not be authorized to pledge the credit of the local government, impose a tax, or sue or be sued independently of the local government. It may administer programs, set policy, and adopt rules of procedure and administrative rules.

DRAFT

(5) Administrative boards may be made elective.

(6) Board members shall be appointed in the manner provided in the plan of government.

(7) The chief executive shall maintain a register of appointments including:

(a) the name of the board;

(b) the date of appointment and confirmation, if any is required;

(c) the length of term;

(d) the name and term of the chairman and other officers of each board; and

(e) the date, time, and place of regular monthly or other regularly scheduled meetings.

(8) Terms of all board members except elected board members shall begin on July 1 and shall not exceed 4 years. Unless otherwise provided by ordinance, board members shall serve at the pleasure of the appointing authority.

(9) A member of the local government governing body may be appointed to a board, but no board shall include more than one member from each governing body represented by the board.

(10) A board shall contain at least five members. All boards shall consist of an odd number of members.

(11) The ordinance creating a board may provide for voting or nonvoting ex officio members.

(12) Two or more local governments may provide for joint boards. The joint boards shall be established by interlocal agreements.

(13) A majority of the board members shall constitute a quorum for the purpose of conducting business and exercising powers and responsibilities. Board action may be taken by a majority vote of those present and voting, unless the ordinance creating the board or rules of procedure of the board requires otherwise.

(14) All boards shall provide for the keeping of written minutes which include the final vote on all board actions indicating the vote of each individual member on the question.

(15) All boards shall by rule provide for date, time, and place of regular monthly or other regularly scheduled meetings. This information shall be filed with the chief executive.

(16) The governing body may prescribe by ordinance qualifications for appointment to boards.

(17) A person may be removed from a board by the appointing authority or as provided by ordinance.

47A-3-405. APPOINTMENT OF YOUTH TO BOARDS. (1) Notwithstanding any provision of law relating to age, the local government appointing authority may appoint youth -- persons 16 to 18 years old -- who are local government residents, to boards.

(2) Youth may be appointed to local government boards requiring special qualifications for membership if the proposed nominees, except for their age, meet the qualifications set by law or ordinance.

(3) Youth appointed to local government boards under this section are entitled to the rights, privileges, and responsibilities of other members when acting as a board member, and their appointments are subject to confirmation by the governing body when required by law, ordinance, or charter.

47A-3-406. OFFICERS OF LOCAL GOVERNMENT. (1) The elected officers of a local government are those officers specified:

(a) in the plan of government adopted by the local government;

(b) by ordinance adopted by the governing body; or

(c) as required by state law.

(2) The term of each elected local government officer shall be the term specified in the plan of government, ordinance, or state law.

47A-3-407. VACANCY IN OFFICE. (1) An office shall be considered vacant if any one of the following conditions exists:

(a) the incumbent fails to meet the qualifications for office;

(b) the incumbent refuses or neglects to take and subscribe to an official oath required by law;

(c) the incumbent refuses or neglects to secure an official bond required by law or ordinance;

(d) the incumbent resigns;

(e) the incumbent is successfully recalled as provided in 47A-3-517.

(f) the incumbent ceases to meet any residency requirements for office;

(g) the incumbent is removed from office by judicial proceedings as provided in 94-7-401 and 94-8-416;

(h) the election or appointment of the incumbent is declared void by a judicial proceeding;

(i) the incumbent is convicted of a felony, an offense involving moral turpitude, or a violation of his official duties;

(j) the incumbent ceases to discharge the duties of his office for a period of 3 months, except when prevented by sickness or excused by the governing body of the local government;

(k) the incumbent is declared of unsound mind;

(l) the governing body determines that the incumbent has become disabled to the degree that he can not perform the duties of his office; and

(m) the incumbent dies.

(2) Unless otherwise provided by law or charter, all vacancies in offices, except in the governing body, shall be filled by appointment by the chairman of the governing body, subject to confirmation by a majority vote of the governing body.

(3) To be eligible for appointment to a vacancy in an elected office, the person appointed must meet all of the requirements for election to the office.

(4) A person appointed to fill a vacancy shall serve until the next regularly scheduled local election, at which time the remainder of the term shall be filled by election.

47A-3-408. SUSPENSION. The governing body may suspend an elected officer if indicted for a felony, an offense involving moral turpitude, or a violation of his official duties.

47A-3-409. RESIGNATION. Resignation of officers must be in writing to the governing body.

47A-3-410. CONSOLIDATION OF OFFICES. (1) The governing body of a county may by ordinance combine any two or more elected offices into a single office.

(2) A municipal governing body may by ordinance eliminate the separate office of elected treasurer.

(3) The governing body may adopt an ordinance consolidating elected offices only after notice and a public hearing on the proposed ordinance.

(4) The ordinance consolidating elected offices shall not be effective until the expiration of the existing officeholders' terms or until a vacancy occurs in one of the offices. The offices so consolidated shall remain consolidated until the ordinance is amended or repealed.

47A-3-411. CIVIL ATTORNEY. (1) The governing body shall provide by ordinance for a civil attorney who may be the public prosecutor.

(2) The local government civil attorney shall be the attorney for all officers, departments, boards, subordinate service districts, and local improvement districts of the local government, except that the governing body may require that interested parties retain another attorney or pay special fees to the civil attorney to prepare necessary documents for the creation of subordinate service districts, local improvement districts, and authorities.

(3) The civil attorney shall not be the attorney for authorities, but at the discretion of the governing body or civil attorney may serve as attorney for authorities and be compensated by the authorities.

(4) The governing body may authorize the employment of special legal counsel and shall authorize the employment of special legal counsel in the event that a conflict of interest would prohibit the civil attorney from serving as attorney for the local government, officers, departments, boards, subordinate service districts, or local improvement districts.

47A-3-412. AUTHORITIES. (1) A local government may establish authorities in the manner provided by law.

(2) Authorities include:

(a) municipal and regional airport authorities as provided in chapter 9 of Title 1;

(b) conservancy districts as provided in chapter 34 of Title 89;

(c) conservation districts as provided in chapter 1 of Title 76;

(d) county water and sewer districts as provided in chapter 45 of Title 16;

(e) drainage districts as provided in chapter 23 of Title 89;

DRAFT

(f) hospital districts as provided in chapter 43 of Title 16;

(g) housing authorities as provided in chapter 1 of Title 35; and

(h) irrigation districts as provided in chapter 12 of Title 89.

(3) Authorities shall prepare budgets in the manner provided by law. The governing body may by ordinance require an authority to submit an annual fiscal report to it.

47A-3-413. REORGANIZATION OF DEPARTMENTS AND BOARDS. (1) Each fiscal year the chief executive shall file a plan showing the organizational chart of the executive branch with the governing body and the department of community affairs. The plan shall indicate the number of employees and the lines of responsibility.

(2) At any time the chief executive may submit proposed changes in department and board structure to the governing body.

(3) Within 6 months of the submission of proposed changes in department and board structure, the governing body shall act on the proposals.

47A-3-414. TRANSITION TO NEW PLAN OF GOVERNMENT. (1) Following a change in the plan of government, if the new plan does not specify a department and board structure, the department structure of the preceding plan of government shall continue to function and remain in existence until a new department structure is adopted.

(2) Within 10 months of the change in the plan of government, the chief executive shall submit a proposed department structure to the governing body.

(3) Within 4 months of the submission of a proposed department and board structure, the governing body shall adopt a department and board structure.

47A-3-415. REORGANIZATION OF EXISTING DISTRICTS. (1) All districts created by previous law, except special improvement districts, rural improvement districts, and districts created for authorities, are reorganized by this section into subordinate service districts on May 2, 1977.

(2) Special improvement maintenance districts and rural improvement maintenance districts are reorganized by this section into subordinate service districts.

(3) Existing special improvement districts and rural improvement districts shall have the status of local improvement districts on May 2, 1977.

(4) Districts created for authorities identified in 47A-3-412 shall continue as authority districts.

(5) The chief executive shall review the status and boundaries of all previous districts and submit a report proposing the continuation, combination, enlargement, reduction, or abolition as a part of the service plan required by 47A-6-207.

(6) After notice as required by 47A-3-418 and 47A-3-419, the governing body may by ordinance continue, combine, enlarge, reduce, or abolish subordinate service districts reorganized under this section.

(7) Boards established by state law to administer districts may be reorganized under the provisions of 47A-3-416.

47A-3-416. TRANSITION OF EXISTING BOARDS. (1) The state laws providing for the organization and operation of the following boards shall be given the status of local ordinances until June 30, 1978, and such boards shall continue to function under the respective laws until the boards are reorganized by local ordinance:

- (a) air pollution board;
- (b) airport board;
- (c) airport board of adjustment;
- (d) joint airport zoning board;
- (e) airport zoning commission;
- (f) buildings and improvement management commission;
- (g) board of trustees of public cemetery;
- (h) county disaster committee;
- (i) economic opportunity and poverty relief commissions;
- (j) county fair commission;
- (k) district fair board of directors;
- (l) fire district trustees;
- (m) board of health;
- (n) interlocal cooperation commission;
- (o) library board;
- (p) local improvement district committee of supervisors;
- (q) mosquito abatement district board;

DRAFT

- (r) museum board;
- (s) open-space land planning commission;
- (t) board of park commissioners;
- (u) board of recreation;
- (v) parking commission;
- (w) zoning board of adjustment;
- (x) planning and zoning commission;
- (y) zoning commission;
- (z) department of public safety supervisors;
- (aa) refuse disposal district board;
- (bb) rural improvement district board;
- (cc) television district trustees;
- (dd) board of urban renewal agencies;
- (ee) board of urban transportation district;
- (ff) sanitary and storm sewer district commissioners;
- (gg) weed control and extermination district board; and
- (hh) winter works committee.

47A-3-417. SUBORDINATE SERVICE DISTRICTS. (1) Subordinate service districts to provide one or more of the services authorized by this title may be established, operated, altered, combined, enlarged, reduced, or abolished by the governing body by ordinance.

(2) A subordinate service district may include all or any part of the jurisdictional area of the local government. Two or more local governments may create a joint subordinate service district by interlocal agreement.

(3) A subordinate service district may:

- (a) provide a higher level of service of any service available on a jurisdiction-wide basis; or
- (b) provide a service that is not available on a jurisdiction-wide basis.

(4) A subordinate service district shall be established according to criteria of need and economic operating efficiency.

(5) A subordinate service district may not be established if the service or services proposed to be provided can be provided either by an existing subordinate service district or by annexation to an incorporated municipality. The subordinate service district may be created if the municipality refuses or is unable to annex the area.

(6) The governing body may levy subordinate service district taxes, impose charges or special assessments, or establish service charges in service districts to finance the services and facilities provided, or it may finance the services out of any other funds available other than general taxes.

47A-3-418. ESTABLISHMENT OF SUBORDINATE SERVICE DISTRICT.
A subordinate service district may be established in the following manner:

(1)(a) The governing body of a local government may establish a subordinate service district by ordinance adopted after notice and public hearing; or

(b) If a petition signed by not less than 10% of the electors of a proposed subordinate service district requesting the local government to provide a service is presented to the governing body, the governing body shall set a date for a public hearing within 30 days and give notice of the hearing. Following the public hearing, the governing body may either adopt an ordinance creating the subordinate service district or refuse to act further on the matter.

(2)(a) After adopting the ordinance, the governing body shall, in addition to all other requirements, publish notice of the adoption of the ordinance creating the subordinate service district. The notice shall include a statement setting out the electors' right to protest. If within 30 days of the notice 50% or more of the electors residing in the proposed subordinate service district file a protest, then the ordinance creating the subordinate service district shall be void.

(b) If hearings on protests indicate that a geographic area desires exclusion from the proposed subordinate service district, the governing body may amend the ordinance to exclude the property in that area.

(3) The governing body may conduct preliminary studies to determine the feasibility, necessity, and advisability of creating a subordinate service district.

(4) The governing body may by resolution require the petitioners to pay the costs of public notice and preliminary studies to determine the feasibility of the subordinate service district.

(5) The ordinance or petition to establish a subordinate service district shall include:

- (a) the name of the proposed district;
- (b) the services to be provided by the proposed district;
- (c) the convenience or necessity of the proposed district;
- (d) a map containing the boundaries of the proposed district;
- (e) the estimated cost of services to be provided and methods of financing the proposed services; and
- (f) the method for administering the proposed district.

(6)(a) An ordinance authorizing a subordinate service district may be proposed by initiative of electors within the district or submitted to referendum of the electors within the district.

(b) The procedures provided in 47A-3-313 shall apply, except only electors of the proposed subordinate service district may vote or sign petitions. An initiative or referendum petition for a subordinate service district requires 15% of the electors residing within the district.

47A-3-419. MODIFICATION OF THE DISTRICT. (1) After receiving petitions or after adoption of an ordinance with notice and public hearing as required in 47A-3-418, the governing body may:

(a) increase, decrease, or terminate the type of services that the subordinate service district is authorized to provide unless 50% of the electors residing in the district protest;

(b) enlarge the district to include adjacent land if 50% or more of the electors residing in the proposed addition do not protest;

(c) combine the subordinate service district with another subordinate service district unless 50% of the electors in either district protest;

(d) abolish the subordinate service district unless 50% of the electors in the district protest;

(e) reduce the area of the district by removing property from the district unless 50% of the electors residing in the territory to be removed from the district protest; and

DRAFT

(f) change the method for administering the subordinate service district unless 50% of the electors in the district protest.

(2) These changes in subordinate service districts may be submitted to the electors of the existing or proposed district, whichever is larger, by initiative or referendum.

47A-3-420. ABOLITION OF A DISTRICT. (1) As provided in 47A-3-419, a governing body may abolish or combine subordinate service districts.

(2) The ordinance abolishing or combining the subordinate service district shall provide for the transfer or other disposition of property and other rights, claims, and assets of the subordinate service district.

(3) All obligations of the abolished subordinate service district shall be paid from resources of the subordinate service district.

(4) All costs of abolishing or combining the subordinate service district shall be paid out of resources of the subordinate service district.

(5) The abolition or combination of the subordinate service district shall not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the subordinate service district.

(6) An ordinance for combining or abolishing a subordinate service district shall provide for the equitable disposition of the assets of the district, for adequate protection of the legal rights of employees of the district, and for adequate protection of legal rights of creditors.

(7) If a district is abolished, the governing body may assume all rights, duties, personnel, property, assets, and liabilities of the former district.

47A-3-421. DISTRICT BOUNDARIES. (1) If possible, subordinate service district boundaries shall conform to other boundaries of political subdivisions, such as school districts, or township and range lines.

(2) A legal description of the boundaries of all subordinate service districts shall be filed with the county records administrator.

47A-3-422. PHASED IMPLEMENTATION. While implementing a subordinate service district, a governing body may implement services by geographical area of the district. Service charges and taxes may be levied only against that part of the district that is receiving the service.

DRAFT

47A-3-423. ANNEXATION BY A MUNICIPALITY. (1) If a portion of a county subordinate service district or an entire subordinate service district is annexed to a municipality, the municipal governing body may after adoption of an ordinance with notice and public hearing:

(a) authorize the county to continue to administer the subordinate service district within the municipal limits;

(b) transfer administration of the subordinate service district within the municipal limits to the municipality;

(c) abolish the subordinate service district within the municipal limits and assume responsibility for providing the services.

(2) The municipal ordinance is subject to all of the provisions of 47A-3-419 except the protest provision.

(3) After a municipality assumes administration of a former county subordinate service district, the district has the status of a subordinate service district created by the municipality and may be operated, altered, combined, enlarged, reduced, or abolished by the municipal governing body.

47A-3-424. JOINT SUBORDINATE SERVICE DISTRICTS. Two or more local governments may create joint subordinate service districts. Each governing body shall follow the procedures prescribed in 47A-3-418 and shall adopt an interlocal agreement to prescribe administration of the district.

47A-3-425. ADMINISTRATION OF SUBORDINATE SERVICE DISTRICTS.

(1) A subordinate service district may be administered directly as a part of a department with or without an advisory board or by an administrative board.

(2) A subordinate service district administered by an administrative board shall be attached to a department for purposes of budget submission.

(3) The budget for each subordinate service district shall be submitted by the department to which it is attached as a separate item in the department budget.

(4) On request, the county assessor shall provide the governing body with the assessed or taxable value of all property in a proposed or established subordinate service district and a list of property owners upon the last completed assessment role.

(5) Service charges for subordinate service districts may be entered on tax notices to be collected with other taxes. If a property owner fails to pay the service charges, it shall become a lien on the property.

(6) Funds raised for a subordinate service district may be used only for subordinate service district purposes.

47A-3-426. JOINT SERVICE AND LOCAL IMPROVEMENT DISTRICTS.

(1) A joint subordinate service and local improvement district may be created to provide services and to finance facilities through special assessments.

(2) A joint district may be created by giving notice to all persons entitled to notice by 47A-3-418 (2) and to all persons entitled to notice by 47A-3-427 (9) and by complying with all requirements for the creation of a subordinate service district and a local improvement district.

(3) If within 30 days of notice of intent to create a joint district, either 50% of the electors or the owners of property bearing one-half of the estimated first-year cost protest, the governing body may not proceed with the joint district except under provisions of 47A-3-428.

47A-3-427. LOCAL IMPROVEMENT DISTRICTS. (1) The governing body may establish a local improvement district for the purpose of financing capital improvements through special assessments on property within the district.

(2) Procedures to establish a local improvement district may be initiated by either:

(a) a petition to the governing body by the owners of one-half in assessed value of the property to be benefited or by one-half of the number of property owners in the area to be benefited or owners of one-half of the area of the property in the area to be affected; or

(b) resolution of the governing body.

(3) The petition or resolution shall recommend a method of payment for the costs.

(4) When a petition or resolution proposing a local improvement district is presented to the governing body, the governing body shall determine by resolution if:

(a) the proposed improvement is necessary and should be made; and

(b) the proposal has sufficient and proper petitioners.

(5) The findings of the governing body on the necessity of the proposal and the sufficiency of the petition are conclusive.

(6)(a) If the governing body passes a resolution approving an improvement proposal, the chief executive shall develop a proposed improvement and payment plan including a description of

DRAFT

the project, a cost estimate, whether the work will be let to bid or performed by the local government, the percentage of the cost to be levied against the property in the district, the method by which the cost will be apportioned, estimated special assessments, and a map showing the property to be assessed for the improvement. When completed, the plan shall be filed with the governing body.

(b) The governing body may by resolution require the petitioners to pay the costs of public notice, mailings, preliminary studies to determine the feasibility of a local improvement district, and the cost of developing the proposed improvement and payment plan.

(7) "Project" means any combination of the following:

(a) any demolition, construction, leasing, acquisition, extraordinary maintenance, or repair;

(b) any legal fees, preliminary studies, preparatory costs, surveying, planning, testing or design work, and project supervision and administration;

(c) any lands or rights in land to be acquired, including eminent domain proceedings;

(d) any furnishings, machinery, apparatus, or equipment normally classified as capital items; but the items must have a useful life of 5 years or more if financed separately and not as a part of a construction project;

(e) the local government's share of the cost of a project undertaken jointly with one or more local governments, the state, or federal government;

(f) cost of damages caused by construction of an improvement;

(g) cost of interest on bonds issued to finance projects; and

(h) cost of local government administration and supervision.

(8) The governing body may pay the whole or any part of the cost of any local improvement district.

(9) The governing body shall adopt a resolution of intent to adopt the improvement plan and set a time for a public hearing on the improvement plan. The governing body shall give notice of the hearing and mail notice of the hearing to every recorded owner of property within the local improvement district. The notice shall include a statement of the right to protest.

DRAFT

(10) The record owner of property is conclusively presumed to be the person in whose name the property is listed on the last property tax roll. If the owner is unknown, the notice may be made and the special assessment may be made against "unknown owner".

(11) A municipal governing body may include in a local improvement district property abutting a street or highway and lying outside the limits of a municipality, with the concurrence of the county governing body, so long as that portion of the street or public highway is adjacent to the limits of the municipality or lies partially within the municipality or extends from one point within the municipality to another point within the municipality.

47A-3-428. OBJECTIONS AND REVISIONS. (1) The governing body may by resolution approve the plan and proceed with the improvement if the owners of property bearing one-half of the estimated cost of the improvement do not object in writing.

(2) Objections to the improvement plan may be filed for 30 days following the first publication of notice.

(3) If written objections are made by owners of property bearing one-half of the estimated cost of the improvement, the governing body may not proceed with the improvement unless it revises the plan to meet the objections, and the written objections are reduced to less than the owners of property bearing one-half of the estimated cost.

(4) A revised plan shall be approved and adopted as an original plan.

(5) When the improvement proposed is the paving, with necessary incidentals, of not more than one cross block to connect with streets or avenues already paved for a continuous distance of three blocks or more running at a right angle, or substantially so, with the single cross block so proposed to be paved, the governing body shall have the right to overrule any and all objections and pave the proposed block. Each parcel in such area shall be assessed by the same method or methods as the district itself.

(6) In case the improvement is the construction of a sanitary sewer, the protest may be overruled by an affirmative vote of a majority of the members of the governing body; unless the protest is made by the owners of more than 75% of the property affected, in which event the protest must be sustained as to the construction of the sanitary sewer. If the legislative body by unanimous vote determines that failure to construct such facility will pose a threat to the public health, such facility shall be installed or constructed.

(7) In determining whether or not sufficient protests have been filed on a proposed local improvement district to prevent further proceedings therein, property owned by a county, a municipality, or federal government shall be considered to the same effect as other property in the proposed district.

DRAFT

(8) The governing body may adjourn the hearing from time to time and a protester shall have the right to withdraw his protest at any time before final action by the local governing body.

47A-3-429. PERFORMANCE OF WORK. (1) As provided in the improvement plan, the governing body may either authorize local government employees to perform the work or let the project to bid under the procedures of section 47A-9-309.

(2) If the bids are rejected or no bids are received, the governing body may, without further proceedings, at any time within 2 years, whenever and as often as the governing body considers it advantageous, readvertise for proposals or bids for the performance of the work.

(3) If the original bidder neglects, fails, or refuses for 15 days after the notice of award to enter into the contract, the governing body may, without further proceedings, again advertise for proposals or bids.

(4) If the contractor does not complete the work within the time limited in the contract or within such further time as the governing body may give him, the governing body may relet the unfinished portion of the work in the same manner as the original contract, or the governing body may, at its option complete the contract, and deduct any cost in excess of the contract price from any moneys, bonds, or warrants due the contractor. In the event there are no moneys, bonds, or warrants due the contractor from which to deduct the cost, the governing body may sue the contractor to recover the cost.

47A-3-430. PAYMENT OF CONTRACTS. The governing body shall provide for making payment for improvement in any local improvement district by the following method: As authorized in part 9 of this title, the governing body shall sell bonds or issue warrants in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district. The proceeds of the sale shall be used to make payment to the contractor or contractors. The payment may be made either from time to time on estimates made by the engineer in charge of the improvements for the governing body or upon the completion of the improvements and acceptance thereof by the governing body.

47A-3-431. ASSESSMENT ROLL. (1) At any time after approval of the improvement plan and the awarding of a contract, the governing body shall levy the authorized percentage of the cost established by the governing body or contract, against each parcel within the improvement district according to the method specified in the improvement plan.

(2) The special assessment against each parcel or part of a parcel within the improvement district may be made by one of the following methods:

(a) Frontage basis. Each parcel of land within the district abutting upon the improvement shall have a special assessment levied for that part of the whole cost which its abutting frontage bears to the frontage on the improvement of the entire district.

(b) Area basis. Each parcel within the district shall have a special assessment levied for that part of the whole cost which its area bears to the entire assessable area within the district.

(c) Value basis. Each parcel within a district shall have a special assessment levied for that part of the whole cost which its assessed valuation bears to the entire assessed valuation within the district.

(d) Proximity basis. Each parcel within a district shall have a special assessment levied based on the relative distance of each parcel or a part of a parcel from the improvement.

(e) Floor space basis. Each parcel within a district shall have a special assessment levied based on the square footage of floor space in any improvement on the parcel and the various uses of that floor space.

(f) Relative usefulness basis. Each parcel within a district shall have a special assessment levied based on the relative usefulness of the improvement to each parcel of land within the improvement district.

(g) Connection basis. Utility service connection charges may be levied separately upon a lump sum based on the bid price in the improvement district contract and levied only against the lots, tracts, or parcel of land served by the utility connection or connections.

(h) Parcel basis. Each parcel of land within the district shall be levied a special assessment to share equally the cost of the district.

(i) Combination basis. A portion of the whole cost may be levied by one of the above methods and the remainder by other methods. The portion to be levied by each method shall be determined by the governing body.

(3) Whenever any parcel of land belonging to the state of Montana, United States, local government, or school district shall front upon the proposed work or improvement, or be included within the district declared by the governing body in its improvement plan to be the district to be levied a special assessment to pay the costs and expenses thereof, the governing body may, in the improvement plan, declare that the parcels of land shall be omitted from the levy of the special assessment thereafter to be made to cover the costs and expenses of the work or improvement, and the cost of the work or improvement in front of the parcels of land shall be paid by the remaining property owners or by the local government, or the governing body may levy a special assessment against such property as other property in the district.

DRAFT

(4) The governing body shall, in its discretion, select the method of special assessment which most nearly matches the special assessment on each parcel to the benefit received by the parcel.

(5) The payment of special assessments may be spread over a term not to exceed 20 years; payments to be made in equal annual installments, or the governing body may provide for an alternative method of payment. The governing body may provide for receiving payment of the installments of the special assessment before they become due and using the proceeds thereof in paying for the project, redeeming the bonds, or for investing the proceeds.

(6) The governing body may determine the value of improvements previously installed or work done and credit the value of the improvements or work against the special assessments levied against the affected property.

(7) The special assessments shall be entered on a special assessment roll containing property descriptions, names of the record owners, and the amount of the assessment on each parcel.

(8) The governing body shall fix a time and place to hear objections to the assessment roll. Notice of the hearing and assessment shall be published.

(9) After the public hearing, the governing body shall correct errors and any inequalities in the roll adopted and certify it corrected.

47A-3-432. REASSESSMENT. (1) The governing body may correct any deficiency or mistake in a special assessment or at any time increase a special assessment to include damages awarded by a court against the district.

(2) Notice and hearing must conform to the initial special assessment procedures.

(3) Payments on the initial special assessment are credited to the property upon reassessment.

(4) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the levying procedure.

47A-3-433. OBJECT AND APPEAL. (1) The regularity or validity of a special assessment may not be contested by a person who did not file a written objection to the special assessment role before its confirmation.

(2) The decision of the governing body upon an objection may be appealed to the district court within 30 days of the date of confirmation of the special assessment roll.

(3) If no objection is filed or an appeal taken within the time provided in this section, the special assessment procedure shall be considered regular and valid in all respects.

47A-3-434. PAYMENT. (1) The municipal and county finance officers shall annually certify by the first Friday of September to the county finance administrator all special assessments due. The special assessments shall be collected in the same manner as property taxes.

(2) All special assessments shall be payable on or before 6 p.m. on November 30 of each year, and in the event the special assessments are not paid on or before that date, the special assessments shall be subject to the same interest and penalties for nonpayment as are provided by the laws of the state of Montana for other delinquent taxes.

(3) All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the special assessments provided for under this section.

(4) When the payment of any one installment of special assessment becomes delinquent, the governing body may by resolution declare all subsequent installments of the special assessment delinquent. The delinquent special assessments shall be certified to the county finance administrator, who shall collect the delinquent special assessments in the same manner and at the same time as the taxes are collected by him, and if the special assessments are not paid, the whole property shall be sold, the same as other property is sold for taxes.

47A-3-435. DELINQUENT SPECIAL ASSESSMENTS MAY BE REINSTATED. Upon payment of the delinquent special assessment installments, the governing body may by resolution repeal the resolution declaring all subsequent installments delinquent. The repeal and reinstatement may be had and made at any time before or after sale of the property for delinquent taxes and before the tax deed has been executed. The certified copy of the resolution of the governing body with reference to the payment, withdrawal, and reinstatement filed with the finance administrator shall be authority for the finance administrator to cancel and withdraw the delinquent special assessments or any installments thereof.

47A-3-436. PAYMENT OF SPECIAL ASSESSMENTS UNDER PROTEST -- ACTION TO RECOVER. When any special assessment levied and assessed under any of the provisions of this title is considered unlawful by the person whose property is thus taxed or from whom the special assessment is demanded, the person may pay the special assessment or any part considered unlawful under protest to the finance administrator; and the person so paying, or his legal representative, may bring

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an action in any court of competent jurisdiction against the local government in whose behalf the same was collected to recover the special assessment or any portion of it paid under protest; however, any action instituted to recover any special assessment paid under protest must be commenced within 60 days after the date of payment. The special assessment paid under protest shall be held by the finance administrator until the determination of any action brought for its recovery.

47A-3-437. MISTAKES OR MISNOMERS NOT TO INVALIDATE SPECIAL ASSESSMENT. When under any of the provisions of this title special assessments are levied against any lot or parcel of land or a part of a parcel as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect the special assessment or render it void.

47A-3-438. GOVERNMENT IN EMERGENCIES. (1) In the event that no members of a county governing body are available during or following an enemy attack or natural disaster, then the district judge or judges of the judicial district in which the county is located shall appoint successors to act in place of the unavailable members. If the judge or judges of the judicial district in which the vacancy occurs are not available to make the appointment, then the district judges of all other judicial districts shall be authorized to make such appointment; however, of the available judges in the state of Montana, that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy.

(2) In the event that no members of a municipal governing body are available following an enemy attack or natural disaster, then the county governing body of the county in which the municipality is located shall appoint successors to act in place of the unavailable members.

(3) In the event that the chief executive of any local government is unavailable to exercise the powers and discharge the duties of his office following a natural disaster or an enemy attack, then those members of the local government's governing body available shall by majority vote choose a successor to act as chief executive of the local government.

(4) Following an enemy attack or natural disaster in which the seat of local government, in the opinion of the governing body of that local government, shall have been rendered unsuitable for use in that capacity, the seat of government may be moved by the governing body to another location they consider most suitable.

(5) If, following an enemy attack or natural disaster, any local governing body is unable to assemble a quorum as defined by statute, then those members of the governing body available for duty shall constitute a quorum; the quorum requirements shall be suspended and where the affirmative vote of a specified proportion of members for the approval of any action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

CHAPTER 3, PART 5

ELECTIONS

47A-3-501. GENERAL DEFINITIONS. In this title, unless otherwise provided or the context requires a technical or other interpretation, the following definitions apply:

(1) "General election" means an election held throughout the state at times specified by law for the purpose of electing individuals to an office; it includes municipal and county general elections.

(2) "Primary" or "primary election" means an election held for the purpose of nominating candidates to public office; it includes municipal and county primary elections.

(3) "Questions submitted to the electors" includes any initiative, referendum, recall, bond, franchise, annexation, incorporation, disincorporation, consolidation, confederation, merger, boundary alteration, amendment and adoption of a local government form, or any other issue required or permitted by law to be submitted to the electors at any special or regularly scheduled election. This term does not include the nomination or election of candidates for office.

(4) "Regularly scheduled election" means a general, primary, school, or other election held at times specified by law.

(5) "Special election" means an election held on a date other than the date of a school, primary, general, or other election regularly scheduled by law; or, an election on one or more particular issues held in conjunction with, but not required by law to coincide with, a regularly scheduled election.

47A-3-502. OFFICERS OF LOCAL GOVERNMENTS. The elected officers of a local government and their terms of office are those specified in 47A-3-406.

47A-3-503. APPORTIONMENT. If the plan of government adopted by a local government requires the nomination or election of members of the governing body by districts, the governing body shall by ordinance after each federal decennial census and may at any time make adjustments in the boundaries of the districts as are necessary to make the districts as nearly equal in population as possible. The ordinance may be adopted only after notice has been given and a public hearing held. A copy of the ordinance shall be filed with the elections administrator.

47A-3-504. ELECTIONS REQUIRED. (1) A county shall hold an election at which officers are elected to those offices for which the terms of the incumbents expire in the last year preceding the expiration of the incumbents term.

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(2) A municipality shall hold an election at which officers are elected to those offices for which the terms of the incumbents expire in any year in which one or more of the incumbents' terms of office expire.

(3) (a) A municipality shall hold its general election on the first Tuesday in April in any year in which an election is required.

(b) A municipality shall hold its primary election on the first Tuesday in February preceding its general election.

(4) (a) A county shall hold its general election on the first Tuesday after the first Monday in November in any year in which an election is required.

(b) A county shall hold its primary election on the first Tuesday in June preceding the county general election.

(5) Municipal officers shall begin their duties the first Monday in May following their election. County officers shall begin their duties on the first Monday in January following their election.

(6) A county may, after notice has been given and a public hearing held, adopt an ordinance rescheduling county elections to coincide with municipal elections. If county elections are scheduled to coincide with municipal elections, elected county officers shall begin their duties the first Monday in May following their election.

47A-3-505. QUALIFICATION OF LOCAL GOVERNMENT OFFICIALS.

(1) A person is eligible to local government elective office except as provided in this section if he is a resident and an elector of the local government and if he meets the district residence requirements for the office, if any, imposed by the local government.

(2) In addition to the requirement established by subsection (1), to be eligible for the offices of civil attorney or public prosecutor a person must be admitted to the practice of law in Montana.

47A-3-506. QUALIFICATIONS OF LOCAL GOVERNMENT ELECTORS.

(1) Any person who has registered as an elector as provided in Title 23 is an elector of the local government of which he is a resident.

(2) As provided in Title 23, the elections administrator shall supply a municipality with precinct registers prior to any municipal election unless informed as provided in Title 23 that precinct registers are not needed.

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(3) When it is necessary to determine the number of electors of a local government for any purpose, including petitions, the number of electors qualified to vote at the last preceding general election held by that local government shall be considered the number of electors.

47A-3-507. PRECINCTS -- DISTRICTS -- POLLING PLACES. (1) The county governing body, after consultation with the municipal governing bodies of any municipality within its boundaries, shall establish election precincts for both municipal and county elections as provided in Title 23, chapter 31.

(2) The county governing body shall designate one or more polling places for each precinct for all state and county elections. The municipal governing body shall designate polling places for all municipal elections. Two or more precincts in a municipality may have a single polling place.

(3) When members of the governing body are to be nominated or elected by districts, there shall be at least one polling place for each district, except that in municipalities with a population of less than 1,500 as determined by the most recent official census, the governing body may provide for a single polling place by ordinance.

47A-3-508. PARTISAN NOMINATION. Nomination for a local government office by an individual in primary partisan elections shall be as provided in Title 23, chapter 33.

47A-3-509. ELECTION PROCEDURES FOR PARTISAN PRIMARY AND PARTISAN GENERAL ELECTIONS. (1) Except as otherwise provided by this chapter, local government partisan primary and general elections shall be conducted as provided in Title 23.

(2) The governing body of each local government shall designate an officer or employee to perform the function of registrar as provided in Title 23. The person designated shall be the elections administrator. County elections administrators shall be responsible for registration of electors in the county, including all municipalities.

(3) The results of an election shall be conducted, canvassed, and returned as provided in Title 23, chapter 40, except that in a municipal election certification of election shall be delivered by the municipal elections administrator to those persons elected.

(4) The local government elections administrator shall file the results of local government elections with the department of community affairs, and the elections administrator of each municipality shall also file the results of municipal elections with their county elections administrator.

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47A-3-510. NONPARTISAN NOMINATION. (1) Each candidate for a nonpartisan primary election shall send a declaration of nomination, as prescribed in 23-3304, to the elections administrator of the local government to which he seeks office.

(2) A candidate successfully completing the requirements of this section shall have his name entered on the primary election ballot as provided in 47A-3-511.

47A-3-511. NONPARTISAN PRIMARY BALLOT AND ELECTION. (1) Except as otherwise provided in this section, a nonpartisan primary election and its results shall be conducted, canvassed, and returned in the same manner as a partisan primary election.

(2) Ballots in a nonpartisan primary election shall contain only the name of the candidate and the office to which the candidate seeks election.

(3) Electors voting at a primary election may vote for a number of candidates equal to twice the number of candidates to be elected at the general election.

(4) If the number of candidates to be entered on the primary ballot for each office does not exceed twice the number of candidates to be elected for the respective offices, a primary election shall not be held in that year and all candidates entered on the primary ballot shall be deemed nominated for their respective offices and shall have their names placed on the general election ballot.

(5) Candidates for nomination, equal to twice the number to be elected at the general election for that office, who receive the highest number of votes cast at the primary; or, nominees determined under (4) of this section, are nominees for office and shall have their names entered on the general election ballot.

47A-3-512. NONPARTISAN GENERAL ELECTIONS. A nonpartisan general election and its results shall be conducted, canvassed, and returned in the same manner as a partisan general election except that party designation may not appear on the ballot.

47A-3-513. ELECTION PROCEDURES FOR QUESTIONS SUBMITTED TO THE ELECTORS. (1) An election on a question submitted to the electors may be held at a special election called for that purpose or may be held with any school, primary, general, or other election.

(2) An election on a question submitted to the electors shall be conducted, canvassed, and returned in the manner provided in Title 23 and this chapter for general elections; however, if the question is submitted to the electors at any school, primary, general, or other election, a separate return must be made.

(3) Unless otherwise provided, the affirmative vote of a majority of those voting on the question shall be required for adoption.

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(4) If the question is submitted at a general or primary election, the polls shall be kept open during the same hours as are fixed for the general or primary election and the judges and clerks for the general or primary election shall act as the judges and clerks for the election.

(5) If the question is submitted at a special election called for that purpose, the governing body shall fix the hours through which the polls are to be kept open. The polls shall be open for at least 8 hours. The governing body may appoint a smaller number of election judges than is required for a general election, but in no case shall there be less than three judges in each precinct. Judges shall act as their own clerks.

(6) If the question is submitted at a special election, the governing body shall meet within 10 days after the date of holding the special election and canvass the returns.

47A-3-514. BOND ELECTION PROCEDURES. (1) As provided in 47A-9-510, a local government must submit to the electors at a regular or special election all proposed general obligation bond authorizations.

(2) General obligation bond elections shall be conducted, canvassed, and returned in the manner provided in 47A-3-513.

(3) Any elector of the local government may vote in the general obligation bond election.

(4) Before a general obligation bond issue election, the governing body shall give notice, which shall include:

(a) the date of the election;

(b) the hours of the election;

(c) the amount and purpose of the proposed bond issue;

(d) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the local government;

(e) the estimated cost of debt service for the next year if the bond issue is not approved and the estimated cost if the bond issue is approved; and

(f) other information as the governing body may determine necessary.

(5) (a) Upon the adoption of the resolution calling for a special election and the filing of the resolution with the elections administrator, the elections administrator must cause a notice to be published stating that registration for the bond election will close at 5 p.m. of the 30th day prior to the date for holding the

election, and at that time the registration books shall be closed for the election. This notice shall supersede the notice required by 23-3016.

(b) After the closing of the registration books for the election, the elections administrator shall promptly prepare lists of the registered electors of the voting precincts who are entitled to vote at the election and shall prepare precinct registers as provided in 23-3013 and deliver them to the election judges prior to the opening of the polls. It shall not be necessary to publish or post the list of electors.

47A-3-515. ELECTIONS FOR ADMINISTRATIVE BOARDS AND COUMMUNITY COUNCILS. A governing body may provide procedures for the nomination and election of the members of administrative boards and community councils by ordinance.

47A-3-516. ELECTIONS ON QUESTIONS SUBMITTED TO ELECTORS WITHIN A DISTRICT. (1) Elections on questions submitted to electors within a proposed or existing subordinate service district through the process of initiative or referendum shall be held at the next county or municipal general or primary election unless the governing body of the county calls a special election or the petition requesting the election contains the signatures of at least 25% of the electors residing in the proposed or existing district, and it requests a special election.

(2) If the proposed or existing subordinate service district is to be located in more than one county, petitions shall be submitted to the elections administrator of the county in which over one-half of the proposed or existing district is located, who shall be responsible for coordinating the petition certification at election.

(3) Unless otherwise provided in this section, the election, if needed, shall be conducted, canvassed, and returned by the county as provided in 47A-3-513 for questions submitted to the electors and in accordance with 47A-3-313 for initiative and referendum.

47A-3-517. RECALL. (1) The holder of any elective office in a local government may be removed at any time by the electors of the local government in the manner provided by this section.

(2) In order to remove any incumbent officer, a recall petition must be filed. The petition shall:

(a) demand an election for recall of the officer sought to be recalled;

(b) contain a statement of general grounds for which the recall is being sought;

(c) be signed and dated by at least 25% of the electors of the local government; and

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(d) contain a sworn statement by one petitioner who shall swear, before an officer competent to administer oaths, that he believes the contained statements to be true and the signatures on the petition to be genuine.

(3) Upon receipt of a certified petition, the governing body shall order and fix a date for an election on the question. The date shall be not less than 70 nor more than 80 days from the date the elections administrator certified the petition as adequate.

(4) The governing body shall publish at least twice the purpose of the election, the reasons stated in the petition for recall, and the date of the election. Publications shall be at least 7 days apart, and the first publication shall be made within 20 days after setting the election date.

(5) Except as provided in this section, the recall election shall be conducted and the results canvassed and returned as provided in 47A-3-513.

(6) A recall ballot shall contain:

(a) the grounds stated in the recall petition;

(b) the officer's statement of 200 words or less, if the statement is filed with the clerk for publication and public inspection within 40 days before the election; and

(c) a question stating: "Shall (name of person) be recalled from the office of (office)? Yes ☐ No ☐".

(7) If a majority of those electors voting on the question favor the recall of the officer, the recall shall take place immediately upon official declaration of the election results.

(8) Any vacancy created as a result of a recall election shall be filled in the same manner as any other vacancy in the same office, except the officer recalled may not be appointed to fill the vacancy.

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CHAPTER 4

ADMINISTRATIVE PROVISIONS

CHAPTER 4

ADMINISTRATIVE PROVISIONS

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CHAPTER 4, PART 1

PERSONNEL

47A-4-101. EMPLOYMENT. (1) All employees shall be hired and discharged as provided in the plan of government or charter. Unless otherwise provided by ordinance, elected officials may employ subordinates in the number and at the salary authorized by the governing body.

(2) Appointment, removal, and promotion of local government officers and employees shall be made without regard to race, color, sex, culture, social origin or condition, or political or religious ideas.

47A-4-102. NEPOTISM PROHIBITED. (1) Nepotism is the bestowal of political patronage by reason of relationships rather than merit.

(2) No local government officer, employee, board, authority, or governing body may appoint to any position any person who is related to him or any of them by consanguinity within the fourth degree or affinity within the second degree. This section shall not apply to the chief law enforcement administrator in the appointment of cooks or matrons.

(3) Any person who knowingly or purposefully violates this section is guilty of a misdemeanor.

47A-4-103. POLITICAL ACTIVITY. (1) No person may attempt to coerce, command, or require a local government employee to influence or give money, service, or other things of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office.

(2) No local government employee may solicit any money, influence, service, or other things of value or otherwise aid or promote any political committee or the nomination or election of any person to public office while on the job or at his place of employment. Nothing in this section is intended to restrict the right of a local government employee to express his personal political views.

(3) Any person who violates subsection (1) of this section shall be fined not to exceed \$1,000 or be imprisoned for a term not to exceed 6 months, or both, for each separate offense. Any person who violates subsection (2) of this section shall be guilty of a misdemeanor. Any violation of this section shall also be punishable by removal from office or discharge from employment.

47A-4-104. COLLECTIVE BARGAINING. (1) In accordance with the provisions of and subject to the restrictions of Title 59, chapter 16, all employees of a local government shall have the right of self-organization, to form, join, or assist any labor organization, to bargain collectively, and to exercise all other rights granted therein.

(2) A local government as a public employer shall have all rights and obligations of a public employer as established by Title 59, chapter 16.

(3) Any general law or charter provision providing for local employment terms and conditions may be modified pursuant to any contract entered into under provisions of the State Public Labor-Management Relations Act.

47A-4-105. HOURS OF LABOR. (1) Except as provided in this section, a period of 8 hours shall constitute a day's work in all works or undertakings carried on or aided by a local government.

(2) The governing body may by ordinance, with the approval of the employees or their duly constituted representative, establish a 40-hour work week consisting of four consecutive 10-hour days. No employee shall be required to work in excess of 8 hours in any one work day if he prefers not to.

(3) In a local government with paid firefighters, a work week for paid firefighters shall be a period of not more than 40 hours during a 5-day week.

47A-4-106. OFFICE HOURS. The governing body shall by ordinance establish office hours for all departments.

47A-4-107. CIVIL SERVICE BOARD. (1) A local government may establish a civil service board by ordinance as provided in this chapter.

(2) Local governments may establish joint civil service boards.

(3) The civil service board shall be organized and operated under 47A-4-108 through 47A-4-110.

47A-4-108. COMPOSITION OF CIVIL SERVICE BOARD -- TERM OF OFFICE -- QUALIFICATIONS. (1) The civil service board shall consist of five members appointed as provided in the form of government or charter for the appointment of board members. If the civil service board is a joint board, each member shall be appointed by each of the cooperating local governments before assuming his position on the civil service board.

(2) At the time the civil service board is established, one member shall be appointed for a term of 2 years, one member shall be appointed for a term of 3 years, one member shall be appointed for a term of 4 years, one member shall be appointed for a term of 5 years, and one member shall be appointed for a term of 6 years. Thereafter, each member shall be appointed for a term of 6 years.

(3) The governing body may remove any member of the civil service board for cause upon stating in writing the reasons for removal and giving the member an opportunity to be heard. Removal shall require a two-thirds vote of the whole governing body except when the governing body has only three members in which case the affirmative vote of all three members of the governing body is required for removal. If the civil service board is a joint board, no member may be removed until after a vote to remove him by each of the cooperating local governments.

(4) A member of the civil service board shall be an elector of the local government. In the case of a joint board, a member shall be an elector of at least one of the participating local governments.

(5) Immediately after appointment, the board shall organize by electing one of its members chairman. The board may appoint employees as may be authorized by appropriation.

47A-4-109. DUTIES OF CIVIL SERVICE BOARD. (1) The civil service board shall examine all applicants for any class of positions with the local government except law enforcement. The examination shall determine whether or not the applicant meets the standards established by the local government and is otherwise qualified to be an employee of the local government.

(2) The civil service board shall provide each applicant who passes the examination with a certificate of eligibility for employment with the local government. No person may be employed with the local government who has not been certified as qualified by the civil service board.

(3) The civil service board shall hear appeals of all employees who are discharged, suspended, or demoted as provided in 47A-4-110.

47A-4-110. DEMOTION, SUSPENSION, OR DISCHARGE. (1) An employee in the classified service who is demoted, suspended, or discharged shall be given, in writing, the specific reasons for the demotion, suspension, or discharge and an opportunity to be heard in his own defense.

(2) Any employee in the classified service aggrieved by his demotion, suspension, or discharge may, within 30 days after being heard in his own defense or after the refusal of his right to be heard, appeal to the civil service board. The appeal shall be in the form prescribed by the civil service board.

(3) Any employee may be summarily suspended, with or without pay, for a period not to exceed 10 regular working days in any one month. The suspended employee may appeal the suspension to the civil service board, which may order a hearing before it rather than accept the summary suspension. In this event, the summary suspension shall be changed to a suspension pending a hearing before the civil service board.

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(4) Upon receipt of an appeal, the civil service board shall set a time and place for a hearing on the issue. The civil service board shall give reasonable notice of the time and place set for the hearing to the parties.

(5) At the hearing the civil service board shall:

(a) have the power to subpoena persons and records;

(b) keep a record including:

(i) all pleadings, motions, and intermediate rulings;

(ii) all evidence received or considered, including a stenographic or mechanical record of oral proceedings when demanded by a party;

(iii) a statement of matters officially noticed;

(iv) questions and offers of proof, objections, and rulings thereon; and

(v) proposed findings and exceptions;

(c) accept evidence in substantial compliance with statutory and common law rules of evidence.

(6) Following the hearing, the civil service board shall decide whether the charge was proven or not proven. The civil service board shall give a written decision on issues before it setting out in detail the facts relied on. One copy of its decision shall be filed with the records administrator, and one copy shall be given to the accused employee.

(7) The civil service board shall have the power, by decision of a majority of the board, to discipline, demote, suspend, remove, or discharge any employee who shall have been found guilty of the charge filed against him.

47A-4-111. PROBATIONARY PERIOD. The governing body may by ordinance provide for a probationary period of not more than one year following appointment or promotion during which a new employee may be discharged or a promoted employee demoted to his old rank without a civil service board hearing.

CHAPTER 4, PART 2

WAGES, EXPENSES, AND BENEFITS

47A-4-201. SALARIES. (1) The salaries of elected officers shall be set by ordinance and may not be reduced after the election of an officer or during an officer's term.

(2) All other salaries may be set by resolution, or the governing body may by ordinance authorize the chief executive, department heads, or administrative boards to set salaries.

47A-4-202. PER DIEM, MILEAGE, ACTUAL TRANSPORTATION EXPENSES. The governing body by ordinance shall provide for payment of per diem and either mileage or actual transportation expenses for local government officers and employees on official and authorized business of the local government.

47A-4-203. ANNUAL VACATION, SICK, AND OTHER LEAVES OF ABSENCE. A local government employee is entitled to leaves of absence as provided in Title 59, chapter 10.

47A-4-204. HOLIDAYS. (1) Local government holidays are those days defined as legal holidays in 19-107 and other days which are declared holidays by the local government's chief executive.

(2) A local government employee shall have a day off on legal holidays. Except for Sundays, he shall be paid for holidays the same as if he had worked.

47A-4-205. SOCIAL SECURITY. A local government shall proceed as provided in Title 59, chapter 11 to extend coverage of the Federal Social Security Act to its employees.

47A-4-206. WORKER'S COMPENSATION. (1) A local government shall provide worker's compensation coverage for its employees.

(2) A local government may elect to provide coverage under any of the plans authorized by Title 92 (worker's compensation), and shall be subject to the same requirements, rules, and regulations as any other employer.

(3) Any sums required to be paid to provide the coverage shall be considered ordinary and necessary expenses of the local government. The amounts required shall be appropriated and paid by the governing body.

(4) Whenever any local government neglects or refuses to file with the industrial accident board a quarterly payroll report of its employees, the board is hereby authorized and empowered to levy a penalty upon the local government in an amount of \$25 for each penalty, to be collected in the manner provided in Title 92 for the collection of penalties.

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47A-4-207. UNEMPLOYMENT COMPENSATION. (1) A local government is subject to all the obligations of a public employer established by Title 87 (unemployment compensation).

(2) Any payments required for compliance with Title 87 shall be considered ordinary and necessary expenses of the local government and shall be appropriated and paid by the governing body of the local government.

47A-4-208. PUBLIC PENSIONS. (1) Any local government may contract with the public employee's retirement system as provided in Title 68, chapter 17 for all employees not covered by another pension system. All existing contracts between the public employee's retirement system and a local government shall continue in force until modified or rescinded as provided in section _____.

(2) All municipal law enforcement officers shall be entitled to participate in the police reserve system established by Title 11, chapter 46.

(3) All county law enforcement officers shall be entitled to participate in the sheriff's retirement system established by Title 11, chapter 47.

(4) Municipal firefighters shall be entitled to participate in fire department relief associations established by Title 11, chapter 48.

(5) Volunteer firefighters shall be entitled to participate in the firefighters disability and pension fund established by Title 11, chapter 49.

47A-4-209. GROUP INSURANCE. (1) A local government shall, upon approval by two-thirds vote of the officers and employees of the local government, department, board, or authority, enter into group hospitalization; medical; health, including long-term disability; accident; dental; life; or other insurance contracts or plans for the benefit of the officers, employees, and their dependents.

(2) The local government shall pay not less than \$10 per month or \$120 per year for the insurance for each officer and employee.

47A-4-210. DEFERRED COMPENSATION PROGRAM. In accordance with the provisions and procedures of Title 68, chapter 27, any local government may establish, after reaching agreement with any employee or the employee's representative if one has been designated or certified, a program for the employee to defer any portion of his compensation, up to the maximum allowed by the internal revenue code in a plan qualified for exemption under applicable sections of the internal revenue code.

47A-4-211. MEMBERSHIP IN ORGANIZATIONS. (1) The governing body of a local government may join, pay membership fees, and service charges, and cooperate with organizations and associations of local governments of this state and other states for the advancement of good government and the protection of local government interests.

(2) Elected officials of a local government shall be allowed per diem and either mileage or actual transportation expenses for attendance at meetings of the appropriate association of local government officials; reasonable expenses or charges against each local government, as a member of the association, shall be paid by the local government.

(3) Employees of a local government may be allowed per diem and either mileage or actual transportation expenses for attendance at meetings of professional organizations or associations, and a local government may pay membership fees and service charges to the organizations. Membership fees and service charges exclude union dues.

CHAPTER 4, PART 3

OFFICIAL BONDS

47A-4-301. PURCHASE OF SURETY BONDS BY LOCAL GOVERNMENT GOVERNING BODY. The governing body of a local government shall purchase all surety bonds for local government officers and employees. A bond may cover an individual officer or employee or a blanket bond may cover all officers and employees, or any group or combination of officers and employees.

47A-4-302. BONDING OF ELECTED OR APPOINTED LOCAL GOVERNMENT OFFICERS AND EMPLOYEES--AMOUNT OF BOND--SOLICITING OF OFFERS. Elected or appointed local government officers and employees shall be bonded in sums as ordinance may require. The amount for which a local government officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. The local government governing body shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds.

47A-4-303. PREMIUMS--CHARGE AGAINST APPROPRIATION. The governing body by appropriation shall provide for the payment of premiums for surety bonds of the local government officers and employees.

47A-4-304. APPROVAL OF BOND BY LOCAL GOVERNMENT LEGAL OFFICE--FILING. The form of bonds for local government officers and employees must be approved by the local government legal advisor and filed and recorded in the office of the local government finance administrator.

47A-4-305. COMPANIES PERMITTED TO EXECUTE BONDS. Bonds purchased by the local government governing body shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state.

47A-4-306. CONDITIONS--SIGNATURES AND SURETIES. (1) The condition of every official bond must be that the covered officers and employees shall perform all official duties required of them by law, and also such additional duties as may be imposed on them by any law of the state subsequently enacted; and that they will account for and pay over and deliver to the person or officer entitled to receive the same all moneys or other property that may come into their hands as such officers or employees. The sureties upon any official bond are also in all cases liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee, appointed or employed by a covered officer or employee.

(2) All official bonds must be signed and executed by the chairperson of the local government governing body and one or more surety companies organized under the laws of this state, or licensed to do business herein.

47A-4-307. DETERMINATION OF ADEQUACY OF BOND BY DEPARTMENT OF COMMUNITY AFFAIRS. The amount for which any local government officer or employee or group of officers or employees shall be bonded shall be subject to the supervision of the department of community affairs. If the department of community affairs determines that the amount of the bond is inadequate, it may require the local government governing body to purchase an adequate bond.

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CHAPTER 4, PART 4

ETHICS

47A-4-401. PUBLIC TRUST. (1) The holding of public office or employment is a public trust created by the confidence which the electorate reposes in the integrity of officers and employees. An officer or employee shall carry out his duties for the benefit of the people of the local government. The officer or employee may not use his office, the influence created by his official position, or the inside information gained by virtue of that position, to advance any of his own, his relative's, or his associate's personal economic interests, other than advancing strictly incidental benefits as may accrue to any of them from the enactment or administration of laws affecting the public generally.

(2) An officer or employee whose conduct departs from his fiduciary duty under this section is liable to the people of the local government as a trustee of property is liable to the beneficiary under 86-310, and shall suffer other liabilities as a private fiduciary would suffer for abuse of his trust. The legal officer of the local government where the trust is violated may bring any appropriate judicial proceedings on behalf of the local government. Any moneys collected in the actions shall be paid to the general fund of the local government.

47A-4-402. RULES OF CONDUCT. (1) An officer or employee may not:

(a) be interested in any contract made by him in his official capacity as officer or employee, or by any board of which he is a member as provided in 59-501; and

(b) be a purchaser at any sale nor a vendor of any purchase made by him in his official capacity as officer or employee;

(2) An officer or employee commits an offense if:

(a) he purposely or knowingly offers, confers, or agrees to confer upon another, or solicits, accepts or agrees to accept any pecuniary benefit or benefit as provided in 94-7-102;

(b) he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation as provided in 94-7-104; or

(c) he solicits, accepts, or agrees to accept any pecuniary benefit from any person subject to their jurisdiction, from any person known to be interested in or likely to become interested in any contract, purchase, payment, claim, or other pecuniary transaction over which he has any discretionary function as provided in 94-7-105.

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47A-4-403. ETHICAL PRINCIPLES FOR ALL PUBLIC OFFICERS AND EMPLOYEES. The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in local government.

(1) An officer or employee should not acquire an interest in any business or undertaking which he has reason to believe may be directly affected to its economic benefit by official action to be taken by the local government.

(2) An officer or employee should not, within the 12 months following the termination of his office or employment, assist or represent any person for a fee or other consideration in connection with certain matters with which he was directly involved during his term or employment. These matters include legislation or rules which he actively helped to formulate, and applications, claims, or contested cases in the consideration of which he was an active participant.

(3) An officer or employee should not perform an official act directly affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

47A-4-404. REMOVAL FROM OFFICE. (1) Any citizen of a local government or the public prosecutor in the county in which the local government is located may bring an action in district court to remove from office any officer or employee who has violated the rules of conduct set out in 47A-4-402 in addition to penalties prescribed by law.

(2) An officer or employee who has been charged as provided in subsection (1) may be suspended from his office or position of employment without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office or position of employment. Upon acquittal he shall be reinstated in his office or position of employment and shall receive all back pay.

(3) If the action is brought by a citizen, the court may award reasonable attorney's fees.

CHAPTER 5

POWERS OF GENERAL POWER LOCAL GOVERNMENTS

CHAPTER 5, PART 1

GENERAL GOVERNMENT POWERS

47A-5-101. LOCAL GOVERNMENT A CORPORATE BODY. A local government with general government powers is a body politic and corporate and as such shall have corporate and governmental powers, a corporate name, and perpetual succession.

47A-5-102. DISTRIBUTION OF POWERS. (1) A local government has legislative, executive, and judicial powers.

(2) All legislative powers are vested in the governing body of the local government.

(3) Executive powers are vested as provided in the form of government adopted by the local government.

(4) The judicial powers of a county are vested in the justice court, and the judicial powers of a municipality are vested in the municipal court.

47A-5-103. LEGISLATIVE POWERS. A local government with general powers has the legislative power subject to the provisions of this title to adopt, amend, and repeal ordinances and resolutions required to:

(1) preserve peace and order and secure freedom from dangerous or noxious activities;

(2) secure and promote the general public health and welfare;

(3) provide any service or perform any function authorized or required by this title;

(4) exercise any power granted by this title;

(5) levy any tax authorized by this title;

(6) appropriate public funds;

(7) impose a special assessment reasonably related to the cost of any special service or special benefit provided by the local government or impose a fee for the provision of a service;

(8) grant franchises; and

(9) provide for its own organization and the management of its affairs.

47A-5-104. POWERS. A local government with general powers has the power subject to provisions of this title:

- (1) to enact ordinances and resolutions;
- (2) to sue and be sued;
- (3) to buy, sell, lease, hold, and dispose of any interest in real and personal property;
- (4) to contract with persons, corporations, or any other governmental entity;
- (5) to pay debts and expenses;
- (6) to borrow money
- (7) to solicit and accept bequests, donations or grants of money, property, services, or other advantages, and comply with any condition that is not contrary to the public interest;
- (8) to execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or from any other source;
- (9) to make grants and loans of money, property, and services;
- (10) to require the attendance of witnesses and production of documents relevant to matters being considered by the local government's governing body;
- (11) to punish contempt and disorder in the governing body's chambers;
- (12) to hire, direct, and discharge employees and appoint and remove members of boards;
- (13) to ratify any action of the local government or its officers or employees which could have been approved in advance;
- (14) to have a corporate seal and flag;
- (15) to acquire by eminent domain as provided in Title 93, chapter 99, any interest in property to provide any service or facility authorized by this title. The ordinance authorizing the taking of private property is conclusive as to the necessity of the taking.
- (16) to initiate a civil action to restrain or enjoin violation of an ordinance;
- (17) to enter private property for inspections;
- (18) to conduct a census;
- (19) to conduct inventories and preparatory studies;

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(20) to condemn and demolish hazardous structures;

(21) to purchase insurance and establish self-insurance plans; and

(22) to exercise other powers, not inconsistent with law, necessary for effective administration of authorized services and functions.

47A-5-105. CONCURRENT POWERS. (1) If a local government is authorized to regulate an area which the state by statute or administrative regulation also regulates, the local government may regulate the area only by enacting ordinances which are consistent with state law or administrative regulation.

(2) If state statute or administrative regulation prescribes a single standard of conduct, an ordinance is consistent if it is identical to the state statute or administrative regulation.

(3) If state statute or administrative regulation prescribes a minimal standard of conduct, an ordinance is consistent if it establishes a standard which is the same as, or higher, or more stringent than the state standard.

(4) A local government may adopt ordinances which incorporate by reference state statutes and administrative regulations in areas in which a local government is authorized to act.

47A-5-106. LIMIT ON LIABILITY. (1) As provided in Article II, section 18 of the 1972 Montana constitution, a local government shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a two-thirds vote of each house of the legislature.

(2) By a two-thirds vote of the legislature, local government liability has been limited as provided in _____ .

[Current constitutional provision. Legislative Council Interim Committee on Judiciary is studying sovereign immunity, and its recommendation for limiting liability of local governments will be reviewed by the Commission prior to the 1977 legislature.]

CHAPTER 6

SERVICES OF GENERAL POWER LOCAL GOVERNMENTS

CHAPTER 6, PART 1

GENERAL SERVICE AUTHORIZATION

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47A-6-101. PURPOSE. It is a policy of the state of Montana to grant maximum authority to general powers local governments to provide services desired by their citizens and it is further a policy of the state to permit general powers local governments to determine locally the appropriate methods for administering and financing local services.

47A-6-102. METHODS FOR PROVIDING SERVICES AND FACILITIES. Authorized local government services and facilities may be provided:

(1) directly by a local government through an office or a department with or without an administrative or advisory board;

(2) by interlocal agreement;

(3) by purchasing the services from a private or public vendor;

(4) through the establishment of subordinate service districts and local improvement districts;

(5) through the creation of public non-profit corporations;

(6) through the establishment of authorities;

(7) through a franchise; or

(8) through any combination of these methods.

47A-6-103. AUTHORIZED LOCAL GOVERNMENT SERVICES AND FACILITIES. A local government may exercise the powers necessary to provide the following services and facilities:

(1) agricultural services, subject to the provisions of chapter 6, part 3, including:

(a) extension services including agriculture, home economic and community development;

(b) fairs and livestock shows and sales services;

(c) livestock inspection and protection services;

(d) market and marketing services;

(e) public scales and loading and unloading services;

- (f) rodent, predator, and vertebrate control services; and
- (g) weed and insect control services.

(2) community and rural development services, subject to the provisions of chapter 6, part 4, including:

- (a) economic development services;
- (b) housing services;
- (c) open spaces;
- (d) planning, zoning, and subdivision control services;

(e) urban and rural development, rehabilitation, and re-development services; and

(f) water course, drainage, irrigation, and flood control services.

(3) community services, subject to the provisions of chapter 6, part 5, including:

- (a) animal control services;
- (b) cemetery, burial and memorial services;
- (c) consumer education and protection services;
- (d) exhibition and show services;

(e) libraries, museums, civic center auditoriums, theatres, art galleries, and historic, cultural, or natural site services;

(f) musical, theatrical, and other cultural services;

(g) park and recreational services;

(h) public camping services; and

(i) zoo, aviary, aquarium, and botanical services.

(4) emergency services, subject to the provisions of chapter 6, part 6, including:

(a) ambulance services;

(b) civil defense services;

(c) fire prevention and protection services; and

(d) law enforcement protection, jails and juvenile detention services.

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(5) human services, subject to the provisions of chapter 6, part 7, including:

- (a) air and water pollution control services;
- (b) child care, youth, and senior citizen services;
- (c) public health and hospital services;
- (d) public nursing and extended care services; and
- (e) social and rehabilitative services.

(6) solid waste services, subject to the provisions of chapter 6, part 8, including:

- (a) recycling services; and
- (b) solid waste collection and disposal services.

(7) transportation services, subject to the provisions of chapter 6, part 9, including:

- (a) airports and aviation services;
- (b) ferries, wharves, docks, and other marine services;
- (c) parking services;
- (d) public transportation services; and
- (e) trafficways, streets, roads, alleys, sidewalks, curbs, gutters, lighting, bridges, malls, bicycle paths, and trails.

(8) water, sewer, and other utility services, subject to the provisions of chapter 6, part 10, including:

- (a) natural or manufactured gas services and facilities;
 - (b) sanitary and storm sewers and sewage treatment services; and
 - (c) water supply and distribution services.
- (9) other services of a local nature.

47A-6-104. REGULATORY POWERS. A local government may exercise the powers necessary to regulate in all or part of its jurisdictional area:

- (1) the operation and use of its public services and facilities;

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(2) the operation and use of its public right-of-ways and railroad crossings;

(3) subdivision and platting of lands as provided in chapter 6, part 4;

(4) land uses and zoning as provided in chapter 6, part 4;

(5) building, housing, electrical, plumbing, and related construction activities;

(6) naming and numbering of trafficways and numbering of houses and lots;

(7) demolition and removal of dangerous or damaged structures;

(8) floodplain construction, water courses, waterways, lakes, and drainage;

(9) public accommodations;

(10) fire prevention and safety, including the storage, possession, and transportation of dangerous or inflammable substances;

(11) air and water pollution within the standards established by the state;

(12) planting, care, and trimming of trees abutting public ways;

(13) open ditches and other nuisances;

(14) the licensing, impoundment, treatment, and disposition of animals;

(15) selling of goods;

(16) selling of food;

(17) selling of alcoholic beverages as provided in Title 4;

(18) vehicles, parking, and traffic;

(19) taxis, buses, street railroads, and other public transportation systems;

(20) pawnshops and secondhand shops;

(21) junkyards, solid waste collection and disposal, and dumps;



(22) circuses, prizefights, dances, shows, and other places of amusement;

(23) cemeteries, mausoleums, and columbariums;

(24) gambling as provided in Title 62, chapter 7;

(25) nursing homes and their employees and inhabitants;

(26) occupations, businesses, and industries;

(27) water supply and sewage disposal;

(28) obscenity and display of offensive sexual material as provided in 94-8-110 through 94-8-110.1; and

(29) all other activities affecting the general health, safety, well-being, or welfare of its inhabitants.

47A-6-105. FACILITIES INFERRED. The power of a local government to provide services includes the power to provide necessary and convenient facilities.

47A-6-106. REGULATORY POWERS INFERRED. The power of a local government to provide services includes the power to exercise regulatory powers in conjunction with those services.

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CHAPTER 6, PART 2

ESTABLISHMENT AND ALLOCATION OF SERVICES

47A-6-201. POLICY AND PURPOSE. (1) It is a policy of the state of Montana to minimize duplication of services and to encourage cooperation in the delivery of services.

(2) It is the purpose of this part to provide common procedures for:

(a) establishing services by general powers and self-government power local governments;

(b) determining the authority of general powers and self-government power counties to provide services within municipal limits; and

(c) determining the authority of general power and self-government power municipalities to exercise extraterritorial powers beyond municipal limits.

(3) Nothing in this chapter shall be interpreted to prevent the utilization of interlocal agreements to share and allocate the authority for delivering services.

47A-6-202. EXISTING SERVICES. Until otherwise provided by ordinance or authorized by an appropriation, local governments shall continue to provide in the same manner those services provided by the local government on May 2, 1977.

47A-6-203. ESTABLISHMENT OF JURISDICTION-WIDE SERVICES. Services that will be available to or benefit the entire local government jurisdiction may be established in the following manner:

(1) The governing body of a local government may establish the service or facility by ordinance.

(2) If a petition signed by not less than 10% of the electors of a local government requesting the local government to provide the service is presented to the governing body, the governing body shall set a date for a public hearing and give notice. Following the public hearing, the governing body may either adopt an ordinance authorizing the service or refuse to act further on the matter.

(3) An ordinance authorizing a service may be proposed by initiative or submitted to referendum as provided in chapter 3, part 5 of this title.

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47A-6-204. FINANCING JURISDICTION-WIDE SERVICES. (1) The governing body may finance services available on a jurisdiction-wide basis by levying taxes, imposing service charges or special assessments, or out of any other funds at its disposal.

(2) The governing body may finance the construction of any facility benefiting the jurisdiction as a whole with general revenue of the local government or by issuing general obligation bonds, revenue bonds, or local improvement district bonds. Bonds shall be issued as provided in chapter 9, of this title.

(3) Any facility may be financed in part by general obligation bonds or local improvement district bonds, and in part by revenue bonds.

47A-6-205. ESTABLISHMENT OF SERVICES LESS THAN JURISDICTION-WIDE. (1) Services that will be available to or benefit only a portion of the local government jurisdiction must be provided through a subordinate service district or local improvement district which are created as provided in chapter 3, part 4 of this title.

(2) A subordinate service district may also be used to provide within a service district a higher level of service than that provided on a jurisdiction basis.

47A-6-206. FINANCING SERVICES LESS THAN JURISDICTION-WIDE. (1) The governing body may finance services available only on a less than jurisdiction-wide basis by levying subordinate service district taxes, imposing service charges or special assessments, or out of any other funds at its disposal.

(2) The governing body may finance the construction of any facility benefiting less than the total jurisdiction with district general revenue or out of any other funds at its disposal, or by issuing revenue bonds, or creating a local improvement district and issuing local improvement bonds. Bonds shall be issued as provided in chapter 9 of this title.

(3) Any facility may be financed in part by local improvement district bonds and in part by revenue bonds.

47A-6-207. SERVICE PLAN. (1) By October 1, 1981, each county governing body shall develop a service plan identifying those services that are available to or benefit the entire county jurisdiction; those services available to or benefit only a portion of the county jurisdiction; and those areas of the county that receive a higher level of services than that provided on a jurisdiction-wide basis.

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(2) After October 1, 1982, services available less than jurisdiction-wide or a higher level of services than are provided jurisdiction-wide may be financed only through a subordinate service district or a local improvement district or service charges levied solely upon residents or property in the area receiving the services.

(3) After October 1, 1981, the governing body of a municipality or municipalities, by resolution, or the electors of a municipality or county, by petition, may identify a service rendered for the benefit of only the property or residents in unincorporated areas and financed from county-wide revenues and may petition the county governing body to develop an appropriate mechanism to finance the activity which either may be by subordinate service district taxes, special assessments, or service charges levied solely upon residents or property in the unincorporated area.

(4) The county governing body within 90 days shall file a response to such resolution or petition which shall either reflect action to develop appropriate mechanisms or reject the petition and state findings of fact demonstrating that the service does not specially benefit the property or residents of the unincorporated areas.

(5) The county governing body shall annually review the service plan. The plan is subject to challenge by municipalities or petition at any time.

47A-6-208. COUNTY SERVICES. A county shall perform county-wide those services required by chapter 8 of this title and permitted by subsections (1), (2)(f), (3)(d), (4)(a), (4)(b), and (5) of 47A-6-103. It may perform all other services and exercise regulatory authority only in the territory outside of municipal limits unless the provisions of 47A-6-210 are complied with.

47A-6-209. CONCURRENT SERVICES. (1) Except for law enforcement, public health, and weed control, if a service is assigned to a county by chapter 8, a municipality may not perform the service.

(2) Municipalities may provide additional law enforcement, public health, and weed control services without prior consent of the county governing body.

47A-6-210. COUNTY SERVICES IN MUNICIPAL LIMITS. (1) Except for services required by chapter 8 of this title and services authorized by subsections (1), (2)(f), (3)(d), (4)(a), (4)(b), and (5) of 47A-6-103 a county may not perform any other service or regulate any activity within municipal limits without prior approval by resolution of the municipal governing body.

(2) The municipal resolution may permit concurrent authority for both the county and the municipality to provide the service or regulate the activity or the municipality may surrender its authority to the county to provide the service and regulate the activity.

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(3) The concurrent jurisdiction or surrender of authority shall be considered permanent until repealed or amended and shall not be considered an interlocal agreement.

(4) The repeal or amendment of concurrent jurisdiction requires the approval of both the county and municipal governing bodies.

(5) If the municipal authority to provide a service has been surrendered to the county, it may be repealed only with the consent of both the county and municipal governing bodies.

47A-6-211. TOTAL TRANSFER OF A SERVICE TO A COUNTY. (1) A municipal governing body may by resolution request the county to assume complete responsibility for a service or regulatory activity being provided by the municipality. The county governing body shall consider the municipal request and respond by resolution within six months.

(2) If the county accepts responsibility for a municipal service, after the county begins delivery of the service, the municipality may not provide the service or regulate the activity unless the county repeals its acceptance. The total transfer of a service to a county under this section shall be considered permanent until repealed or amended and shall not be considered an interlocal agreement.

47A-6-212. MUNICIPAL PERFORMANCE OF COUNTY SERVICES. (1) A municipality may perform within municipal limits any service authorized by subsections (1), (2)(f), (3)(d), (4)(a), (4)(b), and (5) of 47A-6-103 only with the concurrence by resolution of the county governing body.

(2) A county may exempt by resolution a municipality from the county services listed in 47A-6-212(1). If a municipality is exempted, the county services shall be financed through subordinate service districts excluding the municipality and may not be financed by the county all-purpose mill levy.

47A-6-213. MUNICIPAL EXTRATERRITORIAL POWERS. (1) A municipality may exercise the powers granted by this title only within its municipal limits, except that it may within 5 miles of its limits:

(a) provide the services authorized by subsections (2)(d), (2)(f), (3)(a), (3)(b), (4)(a), (5)(a), (6), (7), and (8) of 47A-6-103; and

(b) exercise its regulatory powers authorized by subsections (1), (3), (4), (5), (6), (10), (11), (19), (21), (22), (23), and (27) of 47A-6-104.

(2) (a) Within a metropolitan service area established by an ordinance of both the municipal and county governing bodies after notice and public hearing, a municipality may provide any service or exercise any regulatory power that it is authorized to carry out in the extraterritorial area.

(b) The metropolitan service area may include territory beyond the five mile extraterritorial limits.

(3) This section shall not be construed to restrict the authority of a local government to enter into interlocal agreements for any purpose.

(4) A municipality may continue any extraterritorial service or regulation it was providing on May 1, 1977. The municipality shall provide the county governing body with a list of all existing extraterritorial services and regulations by July 1, 1978.

(5) A municipality may exercise any additional extraterritorial authority only after adopting an ordinance indicating its intent to do so. A copy of the ordinance shall be delivered to the county governing body after first reading and prior to its final adoption.

(a) The county may prevent the final adoption of the ordinance establishing additional municipal extraterritorial authority by adopting a resolution notifying the municipal governing body of its intent to proceed under subsection (5) (b) of 47A-6-213.

(b) The county governing body by ordinance may preempt existing or proposed extraterritorial authority of the municipality only if the county agrees to provide the same or increased level of regulation or service provided or proposed to be provided by the municipality.

(c) A county ordinance preempting additional municipal extraterritorial authority shall become effective as all other ordinances, but ordinances preempting the existing extraterritorial authority of a municipality shall not be effective until the first day of the next fiscal year unless municipal consent for an earlier effective date is granted by ordinance.

(6) Except for law enforcement and regulatory services, extraterritorial municipal services shall be financed by service charges and other nontax revenue.

47A-6-214. EFFECTIVE DATE OF SERVICE CHANGES. The effective date for a change in responsibility for delivering a service shall be the first day of the next fiscal year unless the ordinance or interlocal agreement provides otherwise.

47A-6-215. ALLOCATION OF ASSETS AND LIABILITIES. If the responsibility for delivery of a service is reallocated between units of local government the governing bodies may provide for the reallocation between units of local government of property rights, assets, and liabilities related to the service.

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OUTLINE OF CHAPTER 6,
PART 3 THROUGH PART 10

- PART 3. AGRICULTURAL SERVICES
- Extension Activities
 - Fairs
 - Livestock Inspection and Protection
 - Pest Control
 - Weed Control
- PART 4. COMMUNITY DEVELOPMENT
- Community Redevelopment
 - Economic Development
 - Housing
 - Planning and Zoning
- PART 5. COMMUNITY SERVICES
- Cemeteries
 - Cultural Affairs
 - Libraries
 - Museums
 - Parks and Recreation
- PART 6. EMERGENCY SERVICES
- Ambulance Services
 - Civil Preparedness
 - Fire Protection
 - Law Enforcement
- PART 7. HUMAN SERVICES
- Public Health
 - Social Services
- PART 8. SOLID WASTE
- PART 9. TRANSPORTATION
- Airports
 - Public Transit
 - Roads and Streets (Trafficways)
- PART 10. WATER AND WASTE SERVICES
- Sewer
 - Water

Local governments will use the general provisions of this Title in providing any authorized local government service, except where specific instructions and procedures are provided.

The laws that will be included in these Parts will contain requirements and procedures and will grant specific powers that will be considered to supersede or be additional requirements to the general provisions of the Title.

Drafts of these laws are available for review and comment from the State Commission office upon request.

Public hearings on these laws will be held in September 1976.

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CHAPTER 7

POWERS AND SERVICES OF SELF-GOVERNMENT LOCAL GOVERNMENTS

POWERS OF SELF-GOVERNMENT LOCAL GOVERNMENTS

Part Chapter 7, Chapters Parts 1 and 2, Title 47A

R.C.M. 1947

47A-7-101. Self-government powers. As provided by Article XI, section 6 of the Montana constitution a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter. These powers include, but are not limited to, the powers granted to general power governments by Title 47A, Part Chapter 5.

47A-7-102. Authorization for self-government services and functions. A local government with self-government powers may provide any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter. These services and functions include, but are not limited to, those services and functions which general power government units are authorized to provide or perform by Title 47A, Part Chapter 6.

47A-7-103. General power government limitations not applicable. A local government unit with self-government powers which elects to provide a service or perform a function that may also be provided or performed by a general power government unit is not subject to any limitation in the provision of that service or performance of that function, except such limitations as are contained in its charter or in state law specifically applicable to self-government units.

47A-7-104. Legislative power vested in legislative bodies. The powers of a self-government unit unless otherwise specifically provided are vested in the local government legislative body and may be exercised only by ordinance or resolution.

47A-7-105. State law applicable. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner and subject to the limitations provided in this Title.

47A-7-106. Construction of self-government powers. The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government

power or authority shall be resolved in favor of the existence of that power or authority.

Chapter Part 2--LIMITATIONS ON SELF-GOVERNMENT
LOCAL GOVERNMENTS

47A-7-201. Powers denied. A local government unit with self-government powers is prohibited the exercise of the following:

(1) Any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) Any power that applies to or affects the provisions of Title 41 (labor), chapter 16 of Title 59 (collective bargaining for public employees), Title 87 (unemployment compensation), or Title 92 (workmen's compensation) except that subject to the provisions of those titles it may exercise any power of a public employer with regard to its employees;

(3) Any power that applies to or affects the public school system except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power which it is required by law to exercise regarding the public school system;

(4) Any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) Any power that establishes a rate or price otherwise determined by a state agency;

(6) Any power that applies to or affects any determination of the state department of lands with regard to any mining plan, permit, or contract;

(7) Any power that applies to or affects any determination by the department of natural resources and conservation with regard to a certificate of environmental compatibility and public need;

(8) Any power that defines as an offense conduct made criminal by state statute, or which defines an offense as a felony, or which fixes the penalty or sentence for a misdemeanor in excess of a fine of five hundred dollars (\$500) or six (6) months imprisonment or both such fine and imprisonment, except as specifically authorized by statute;

(9) Any power that applies to or affects the right to

keep or bear arms, except that it has the power to regulate the carrying of concealed weapons;

(10) Any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) Any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 66, (professions and occupations) as prerequisites to the carrying on of a profession or occupation.

(12) Any power that applies to or affects Title 26 (fish and game).

47A-7-202. Powers requiring delegation. A local government unit with self-government powers is prohibited the exercise of the following powers unless the power is specifically delegated by law:

(1) The power to authorize a tax on income or the sale of goods or services. This section shall not be construed to limit the authority of a local government to levy any other tax or establish the rate of any other tax;

(2) The power to regulate private activity beyond its geographic limits;

(3) The power to impose a duty on another unit of local government, except that nothing in this limitation shall affect the right of a self-government unit to enter into and enforce an agreement on inter-local cooperation;

(4) The power to exercise any judicial function, except as an incident to the exercise of an independent self-government administrative power;

(5) The power to regulate any form of gambling, lotteries, or gift enterprises.

47A-7-203. Consistency with state regulation required.

(1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or

requirements which are lower or less stringent than those imposed by state law or regulation.

(3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules and regulations governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.

47A-7-204. Mandatory provisions. A local government with self-government powers is subject to the following provisions. These provisions are a prohibition on the self-government unit acting other than as provided:

(1) Title 47A, chapter 1, part 1, General Provisions;

(2) Title 47A, chapter 1, part 2, Definitions and Construction;

(3) Title 47A, chapter 1, part 3, Provisions Common to All Forms of Local Government;

~~{1}--All-state-laws-providing-for-the-incorporation-or-dis-incorporation-of-cities-and-towns, for-the-annexation, disannexation or-exclusion-of-territory-from-a-city-or-town, for-the-creation, abandonment-or-boundary-alteration-of-counties-and-for-city-county consolidation;~~ (4) Title 47A, chapter 2, Local Government Formation;

~~{2}--Title-16, chapter-5;~~ (5) Title 47A, chapter 3, part 1, Review, Amendment and Adoption of Local Government Form;

~~{3}--All-laws-establishing-legislative-procedures-or-requirements for-units-of-local-government;~~ (6) Title 47A, chapter 3, part 3, Legislative Organization and Procedure;

~~{4}--All-laws-regulating-the-election-of-local-officials;~~ (7) Title 47A, chapter 3, part 5, Elections;

(8) Title 47A, chapter 6, part 2, Establishment and Allocation of Services;

~~{5}~~ (9) All laws which require or regulate planning or zoning;

~~{6}--Any-law-directing-or-requiring-a-local-government-or-any officer-or-employee-of-a-local-government-to-carry-out-any-function or-provide-any-service;~~ (10) Title 47A, chapter 8, Duties of Local Governments as Agents of the State;

~~{7}--Any-law-regulating-the-budget, finance-or-borrowing-pro-cedures-and-powers-of-local-governments, except-that-the-mill-levy limits-established-by-state-law-shall-not-apply;~~ (11) Title 47A, chapter 9, part 1, General Provisions; Title 47A, chapter 9, part 2, Budget and Appropriation; Title 47A, chapter 9, part 3, Local Gov-ernment Financial Administration; Title 47A, chapter 9, part 5, Debt Management; Title 47A, chapter 9, part 6, Fiscal Emergencies.

~~{8}~~ (12) Title 93, Chapter 99, eminent domain.

History: Enacted Sec. 1, chap. 345, S.L. 1975.
Effective May 2, 1977.

CHAPTER 8

DUTIES OF LOCAL GOVERNMENTS AS AGENTS OF THE STATE

CHAPTER 8, PART 1

GENERAL PROVISIONS

47A-8-101. PURPOSE. (1) It is the policy of the state of Montana to encourage resourceful and responsible local government.

(2) To further this policy it is the purpose of this chapter to set out those services which a local government must provide.

(3) In providing any service required by this chapter, a local government acts as an agent of the state.

47A-8-102. BY WHOM PERFORMED. (1) The governing body of the local government shall provide by ordinance for the provision of the services required by this part.

(2) The governing body shall by ordinance assign responsibility for required services to one or more departments, officers, or employees of the local government.

(3) The governing body shall appropriate sufficient resources to provide fully the required services.

(4) The governing body may by ordinance at any time reassign responsibility for any required service to a different department, office, or employee.

(5) The governing body may enter into interlocal agreements to provide services required by this part.

CHAPTER 8, PART 2

RECORDS

47A-8-201. RECORDING. Each county shall provide for the filing and recording of the following documents:

(1) deeds, grants, transfers, contracts to sell or convey real estate, mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases which have been acknowledged or proved, and abstracts of instruments which have been acknowledged or proved;

(2) certificates of births and deaths;

(3) wills devising real estate admitted to probate;

(4) official bonds;

(5) transcripts of judgments which by law are made liens upon real estate;

(6) instruments describing or relating to the individual property of married individuals and sole trader judgments;

(7) all orders and decrees made by the district court in probate matters affecting property which are required to be recorded;

(8) notice of pre-emption claims;

(9) notice and declaration of water rights;

(10) assignments for the benefit of creditors;

(11) affidavits of annual work done on mining claims;

(12) notices of mining locations and declaratory statement;

(13) estrays and lost property;

(14) a book containing appraisement of state lands;

(15) notice of any lien created under authority of the laws of this state;

(16) certified copies of final judgments or decrees participating or affecting the title or possession of real property, any part of which is situated in the county, are to be filed and recorded with the record of deeds, grants, and transfers;

(17) certificates of discharge of persons honorably discharged who served with the United States forces; and

(18) such other writings as are required or permitted by law to be recorded.

47A-8-202. INDEXES. (1) The governing body shall by ordinance require the elected official or the employee designated as the records administrator to keep the following indexes in the form prescribed by the department of community affairs:

(a) an index of deeds, grants, transfers, and contracts to seal or convey real estate;

(b) an index of real property mortgages;

(c) an index of releases of real property mortgages;

(d) an index of powers of attorney;

(e) an index of leases;

(f) an index of marriage certificates;

(g) an index of assignments of mortgages and leases;

(h) an index of wills;

(i) an index of official bonds;

(j) an index of notices of liens;

(k) an index to transcripts of judgments;

(l) an index of attachments;

(m) an index of notices of pending actions;

(n) an index of certificates of sale of real estate sold under execution or under orders made in any judicial proceeding;

(o) an index of the separate property of married persons and sole trader judgments;

(p) an index to affidavits for annual work done on mining claims;

(q) an index of mining claims and declaratory statements;

(r) an index to the register of births and deaths;

(s) an index to notices and declaration of water rights;

(t) an index to the "estray and lost property book";

(u) an index to the record of assignments for the benefit of creditors;

(v) an index to financing statements as provided in Part 4 of the Uniform Commercial Code -- Secured Transactions;

(w) an index to the official records of the county as are prescribed in 47A-8-206; and

(x) a miscellaneous index of papers not stated in this section.

(2) In keeping indexes, any county may keep in the same volume any number of the indexes mentioned in this section. All indexes must be kept separate and distinct and all volumes must be clearly marked as to which indexes they contain.

(3) A county may use methods of information storage as are authorized by the department of community affairs.

47A-8-203. DUTY OF RECEIPT OF AN INSTRUMENT TO BE RECORDED.

(1) When a document is offered to the officer or the employee designated by the governing body as the records administrator, and upon the payment of the required recording fee, the records administrator shall:

(a) immediately record the document's reception in the records administrator's receipt book;

(b) either by hand, printing, typewriter, photographic process, or the use of prepared forms immediately and without delay photograph, record, or correctly copy the document, together with all supporting or assessed documents, in a separate well-bound or to-be-bound book and must record the instruments in the order received and note at the foot of the record the exact time of the document's reception; and

(c) write on the instrument or document the time it was received, specifying the year, month, day, hour, and minute, and noting the time it is recorded and the book and pages in which it is recorded; and shall then deliver the instrument or document to the person who left it upon his request or instructions.

(2) The records administrator is not bound to record any instrument or file any paper or notice or furnish service connected with his office until the fee prescribed by ordinance is demanded, paid, or tendered.

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(3) The records administrator shall not receive for recording any deed, mortgage, or assignment of mortgage unless the post office address of the grantee, mortgagee, or assignee of the mortgage, as the case may be, is contained therein, provided that this requirement shall not affect the validity of the record of any instrument which has been or may be recorded.

(4) Seed liens and thresher's liens filed for record with a county shall be retained by the county for a period of 8 years after the lien has ceased to be a lien on the property described therein.

(5) Nothing in this part shall be construed as preventing the recording or photographing or copying of the instruments separately upon a single or loose page or pages of a book if the page or pages shall immediately become a part of a book or volume which, when completed, shall be firmly bound and the pages securely locked or sealed into the record.

47A-8-204. MAKING OF SEARCHES. The records administrator may, upon the application of any person and upon the payment or tender of the required fees, make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office and furnish a certificate thereof stating the names of the parties to the instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded.

47A-8-205. LIABILITY FOR NEGLECT OF DUTY. Any records administrator to whom an instrument, proved or acknowledged according to law, or any paper or notice which may be law be recorded is delivered for record is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby and is punishable as provided by 94-7-209, if he:

(1) neglects or refuses to record the instrument, paper, or notice within reasonable time after receiving it;

(2) records any instruments, papers, or notices in any other manner than as prescribed;

(3) neglects or refuses to keep in his office indexes as are required by this article or to make the proper entries therein;

(4) neglects or refuses to make the searches and to give the certificates required by this part; or if the searches or certificates are incomplete or defective, when this incompleteness or defect is due to his direct responsibility particularly affecting the property in respect to which it is requested; or

(5) alters, changes, or obliterates any records deposited in his office or inserts any new matter therein.

47A-8-206. OFFICIAL RECORDS. (1) The governing body of each county shall provide for the keeping of the following official records:

(a) maps of all municipalities or additions to municipalities within the county, together with the description, acknowledgment, or other writing thereon;

(b) maps of all subordinate service districts and authorities and all additions to these within the county, together with the descriptions, acknowledgments, or other writings thereon;

(c) in suitable plat books, copies of all plats made or caused to be made by the county and have recorded therein a description of every public highway within the county;

(d) in suitable plat books, all final subdivision plats made within the county;

(e) a separate, correct record numbered progressively of all county surveys required by court order and of all surveys made for the county for individuals or corporations which pertain to public roads and bridges;

(f) together with the above official records, any original drawings, the original book or books of field notes, and all original calculations and computations all properly endorsed as to their number of survey; and

(g) all other records required to be kept by law.

(2) The governing body shall upon request make copies of all official records available to the public and may impose reasonable fees for providing the copies.

CHAPTER 8, PART 3

PUBLIC HEALTH

47A-8-301. GENERAL DUTIES. It is the duty of each county subject to the general supervision of the state department of health and environmental sciences to:

- (1) initiate and implement measures to protect the public health;
- (2) guard against the introduction and spread of communicable diseases;
- (3) provide for the making of inspections for sanitary conditions; and
- (4) enforce state laws and rules relating to public health.

47A-8-302. REPORTS. Each county shall:

- (1) on forms provided by and containing information required by the department of health and environmental sciences, report communicable diseases to the department each week;
- (2) report once each quarter to the department of health and environmental sciences on sanitary conditions in the county, together with a detailed account of public health activities; and
- (3) make other reports as the department of health and environmental sciences is authorized by law to require.

47A-8-303. BOARD OF HEALTH. (1) The county may delegate responsibility for the duties imposed by this part to a board of health established by ordinance.

(2) If responsibility is delegated to a board, the county shall provide the department of health and environmental sciences with a copy of the ordinance establishing the board and shall inform the department as to the membership of the board and of changes therein.

(3) If no board is created, the county shall file with the department of health and environmental sciences the name or names of the county employees responsible for the duties imposed by this part.

CHAPTER 8, PART 4

LAW ENFORCEMENT

47A-8-401. LAW ENFORCEMENT ADMINISTRATOR. It shall be the duty of each county to provide for a chief law enforcement administrator and subordinates as may be required who shall:

- (1) preserve the peace;
- (2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense.
- (3) prevent and suppress all affrays, breaches of peace, riots, and insurrections which may come to the administrator's knowledge;
- (4) perform the duties of humane officer within the county for the protection of animals;
- (5) attend all courts, except justices and police courts, at their respective terms or sessions held within the county, and obey their lawful orders and directions;
- (6) command the aid of as many inhabitants of the county as thought necessary in the execution of these duties;
- (7) take charge of and keep the county jail and the prisoners therein; and
- (8) on the first Monday in January, and every 3 months thereafter, return to the governing body a certified list of the names of all prisoners in custody on the last day of the preceding month, with the time and cause of their confinement, the length of time for which they were committed, and the number received and discharged during the preceding 3 months. In case he fails so to do, the law enforcement administrator must not receive any compensation for the sustenance of the prisoners in his custody.

47A-8-402. INQUESTS. (1) It shall be the duty of each county governing body to designate an officer, department, or employee who shall:

- (a) hold inquests as provided in 95-801 to 95-814;
- (b) keep an official register, to be labeled "register of inquests", in which the officer must enter the date of holding all inquests, the name of the deceased, when known, and when not, a description of the deceased as may be sufficient for identification; property found on the person of the deceased, if any; what

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disposition of the property was made by the officer or employees; the cause of death, when known, and any other information which may pertain to the identity of the deceased;

(c) if the officer, department, or employee considers it necessary, he or it may hold an inquest as provided in 95-801 to 95-814 when a person confined in a state institution has died. The inquest may be held only by the officer, department, or employee in whose county the state institution is located;

(d) whenever an inquest as described in subsection (c) of this section is held, properly certify a statement of all costs incurred by the county in the inquest. The statement shall be certified by the officer, department, or employee and sent to the department of institutions for approval. Upon approval, the department must cause the amount of the costs to be paid out of the money appropriated for the state institution to the county financial administrator where the inquest was held;

(e) deliver, within 30 days after an inquest on a dead body, to the county financial administrator of the county or the legal representatives of the deceased any moneys or other property found upon the dead body;

(f) when an inquest is held and no other person takes charge of the body of the deceased, the officer, department, or employee must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of burial, the expenses are a legal charge against the county; and

(g) file with the county finance administrator of the governing body of the county a statement in writing, verified by his affidavit, showing the amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement, and the disposition of the property.

(2) If the governing body of the county fails to designate an officer, department, or employee or the person designated is absent or unable to attend, the duties of this section may be discharged by any justice of the peace of the county with the like authority and subject to the same obligations and penalties as the person designated.

47A-8-403. PUBLIC PROSECUTOR. (1) It shall be the duty of each county to provide for a public prosecutor who may be the county civil attorney. If the plan of government provides for an elected legal officer, prosecutor, or county attorney, the duties of the public prosecutor as provided in this section shall be performed by that person. The public prosecutor must:

(a) attend the district court and conduct, on behalf of the

state, all prosecutions for public offenses and represent the state in all matters and proceedings to which it is a party, or in which it may be beneficially interested, at all times and in all places within the limits of his county;

(b) institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that the offenses have been committed, and for that purpose, whenever not otherwise officially engaged, must attend upon the magistrate in cases of arrest, and attend before and give advice to the grand jury, whenever cases are presented to them for their consideration;

(c) draw all indictments and informations, defend all suits brought against the state in the county, prosecute all recognizances forfeited in the courts of record, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state;

(d) deliver receipts for money or property received in his official capacity, and file duplicates thereof with the county finance administrator;

(e) on the first Monday of January, April, July, and October, in each year, file with the finance administrator an account of all moneys received by him in his official capacity during the preceding 3 months;

(f) keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially, and of the proceedings therein;

(g) when ordered or directed by the attorney general to do so, promptly institute and diligently prosecute in the proper court, and in the name of the state of Montana, any criminal or civil action or special proceeding, it being hereby declared that the supervisory powers granted to the attorney general by 82-401 (5) include the power to order and direct public prosecutors and county civil attorneys in all matters pertaining to the duties of their offices; and

(h) institute an action if the governing body of the county, without authority of law, orders any money paid as a salary, fees, or for any other purpose, and the money has been actually paid; or if any other county officer has drawn any warrant or warrants in his own favor, or in favor of any other person, without authorization by the governing body of the county or by law and the same has been paid. The action shall be in the name of the county against the person or persons to recover the money so paid and for 25% damages for the use of the moneys. No order of the governing body of the county is necessary to maintain the suit; but when the

money has not been paid on the order or warrants it is the duty of the public prosecutor, upon receiving notice thereof, to commence an action in the name of the county for restraining its payment, and no order of the governing body of the county is necessary to maintain the action.

(2) The legislature shall appropriate and the department of community affairs shall distribute \$10,000 per year to the general fund of each county to be applied against the salary of the public prosecutor or, in those counties where the public prosecutor is also the civil attorney, against the salary of that position.

47A-8-404. CLAIMS AGAINST PUBLIC PROSECUTOR'S OR CIVIL ATTORNEY'S OWN COUNTY. The public prosecutor or civil attorney, except for his own services, must not present any claim, account, or other demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

47A-8-405. JAILS. (1) A jail shall be built or provided and maintained at the expense of the county in each county, except that whenever, in the discretion of the governing bodies of two or more counties, it is necessary or desirable to build, provide, or utilize a common jail, they may do so in one of the counties concerned. The common jail shall be built or provided and maintained at the expense of the counties concerned on a basis as the governing bodies shall agree. The common jail shall be kept by the law enforcement officers of the counties utilizing it on a basis as the chief law enforcement administrators utilizing the common jail shall agree.

(2) The governing body has the duty of building, inspecting, and repairing the jail, and must, once every 3 months, inquire into the security of the jail and must take all necessary precaution against escape, sickness, or infection.

(3) County jails shall be used:

(a) for the detention of persons committed to secure their attendance as witnesses in criminal cases;

(b) for the detention of persons charged with crime and committed for trial;

(c) for the confinement of persons committed for contempt, or upon civil process, or by other authority of law; and

(d) for the confinement of persons sentenced to imprisonment upon a conviction of crime.

(4) Each county jail must contain a sufficient number of rooms to allow all persons belonging to any one of the following classes to be confined separately and distinctly from persons

belonging to any of the other classes:

(a) persons committed on criminal process and detained for trial;

(b) persons already convicted of crime and held under sentence;

(c) persons detained as witnesses, or held under civil process, or under an order imposing punishment for a contempt;

(d) males separately from females; and

(e) juveniles separately from adults.

47A-8-406. WHO MAY BE DETAINED, EXPENSE OF PRISONERS, EXCEPTIONS. (1) The chief law enforcement administrator must receive all persons committed to jail by a competent authority, and provide them with necessary food, clothing, and bedding, for which claims shall be submitted for the actual expenses incurred to the governing body of the county for their determination, and, except as provided in this section, to be paid by the finance administrator.

(2) If a person is committed to jail by an agency of the state of Montana, the agency shall upon a claim presented by the county pay the county the actual and necessary expenses incurred for each and every prisoner held in the county jail upon order or commitment of the agency. For the purposes of this section, a day shall be defined as a 24-hour period or portion thereof, beginning with the time of incarceration.

(3) If the governing body of the county and the United States through or by the proper officer or officers enter into an agreement that the United States shall pay on demand by the county the actual and necessary expenses for each federal prisoner confined, the chief law enforcement administrator must receive, and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States until the prisoner is discharged according to law as if he had been committed under process issued under the authority of this state.

(4) Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party thereto, the chief law enforcement administrator is not bound to receive the person, unless security is given on the part of the party at whose instance the process is issued by a deposit of money to meet expenses of necessary food, clothing, and bedding for the person committed or to detain the person any longer than these expenses are provided for. This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or order of court.

(5) If, in the opinion of the chief law enforcement administrator, any prisoner, while detained, requires medication, medical services, or hospitalization, the expense of the prisoner shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The public prosecutor shall initiate proceedings to collect any charges arising from medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay.

47A-8-407. PRISONERS. (1) Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process must not be kept or put into the same room, nor shall male and female prisoners (except husband and wife) be kept or put into the same room.

(2) A prisoner committed to the county jail for trial, or for examination, or upon conviction for a public offense must be actually confined in the jail until he is legally discharged; and if he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape.

(3) A chief law enforcement administrator to whose custody a prisoner is committed, as provided in 47A-8-406 (3), is answerable for his safekeeping in the courts of the United States according to the laws thereof.

(4) A law enforcement officer or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served must forthwith deliver it to the prisoner with a note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages occasioned thereby.

(5) Persons confined in the county jail under a judgment of imprisonment rendered in a criminal action or proceeding may be required by the governing body of the county to perform labor on the public works or ways in the county. The governing body of the county making the order may prescribe and enforce the rules and regulations under which the labor is to be performed.

47A-8-408. REMOVAL OF PRISONERS IN CASE OF FIRE OR PESTILENCE.

(1) When a county jail or building contiguous to it is on fire, and there is reason to believe that the prisoners may be injured or endangered, the chief law enforcement administrator must remove them to a safe and convenient place, and there confine them as long as it may be necessary to avoid the danger.

(2) When a pestilence or contagious disease breaks out in or near a jail, and a physician certifies that it is likely to endanger the health of the prisoners, the district judge may by a written appointment designate a safe and convenient place in the county, or the jail in a contiguous county, as the place of

their confinement. The appointment must be filed in the office of the district court and authorize the chief law enforcement administrator to remove the prisoners to the place or jail designated and there confine them until they can be safely returned to the jail from which they were taken.

47A-8-409. CONTIGUOUS COUNTY JAIL -- WHEN USED -- PROCESS.

(1) When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the district judge may, by written appointment filed with the clerk of the district court, designate the jail of a contiguous county for the confinement of the prisoners of his county, or any of them, and may at any time modify or annul the appointment.

(2) A copy of the appointment, certified by the clerk of the district court, must be served on the law enforcement officer or keeper of the jail designated; that law enforcement officer or keeper must receive into his jail all prisoners authorized to be confined in it, in accordance with this section; the law enforcement officer or keeper is responsible for the safekeeping of the persons so committed in the same manner and to the same extent as if he were chief law enforcement administrator of the county for whose use his jail is designated; and with respect to the persons so committed, he is deemed the chief law enforcement administrator of the county from which they were removed.

(3) When a jail is erected in the county for the use of which the designation was made, or its jail is rendered fit and safe for the confinement of prisoners, the district judge of that county must, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased, and that it is revoked.

(4) The clerk must immediately serve a copy of the revocation upon the chief law enforcement administrator of the county, who must thereupon remove the prisoners to the jail from which the removal was made.

CHAPTER 8, PART 5

JUDICIAL

47A-8-501. JUSTICE COURTS. (1) Each county shall provide for the election of one or more justices of the peace.

(2) Each justice of the peace shall have the powers and duties assigned by law.

(3) The county governing body shall provide for each justice of the peace:

(a) the office, courtroom, and clerical assistance necessary to enable him to perform his duties in dignified surroundings;

(b) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary in the proper keeping of records and files of the judicial office and the transaction of business; and

(c) the latest edition of the Revised Codes of Montana and all official supplements thereto.

(4) All actual and necessary expenses incurred by the justice of the peace in the performance of his official duties are a legal charge against the county.

(5) Each justice of the peace shall receive the compensation established by state law.

47A-8-502 DISTRICT COURT FACILITIES. (1) Each county shall provide the district court with suitable rooms and chambers together with attendants, furniture, fuel, lights, books, and stationery necessary for the transaction of the court's business.

(2) Each county shall provide for the safekeeping of court records, adequately protecting them against fire and other hazards.

(3) If a county fails to meet the obligations imposed by this section, the district judge may order the deficiency corrected at county expense.

47A-8-503. CLERK OF DISTRICT COURT. Each county shall designate one or more departments, officers, or employees to perform the following duties:

(1) take charge of and safely keep, or dispose of according to law, all books, papers, and records which may be filed or deposited with or in the district court;

(2) act as clerk of the district court, and attend each term or session thereof, and attend the judges at chambers when required;

(3) issue all processes and notices required to be issued; enter all orders, judgments, and decrees proper to be entered; keep in each court a register of action, as provided in the code of civil procedure, which must also state the names of the attorneys and all fees charged in each action, and a list of all the fees charged;

(4) keep for the district court, in separate volumes, an index of all suits, labeled "general index - plaintiffs", each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "number of suit", "plaintiffs", "defendants", "date of judgment", "number of judgment", "page of entry of judgment in judgment book", "page of minute book of district court"; also, an index labeled "general index - defendants", each page of which must be divided into seven columns under their respective heads, alphabetically arranged as follows: "number of suit", "defendants", "plaintiffs", "date of judgment", "number of judgment", "page of entry of judgment in judgment book", "page in minute book of district court";

(5) keep a minute book containing the daily proceedings of the court which may be signed by the clerk; the minute book must be indexed by the names of both defendant and plaintiff;

(6) keep a book called "record of probate proceedings", which must contain all the orders and proceedings of the district court sitting in probate matters, as prescribed elsewhere in this code. The index must be indexed in the name of the deceased person, the personal representative, the guardian, or ward;

(7) keep a book called the "probate record book", in which must be recorded all wills, bonds, letters testamentary, and other papers as prescribed elsewhere in this code. The record must be indexed in the same manner as the "record of probate proceedings";

(8) keep proper books for indexing bonds given in criminal cases and all the bonds filed therein shall be entered showing the title and docket number of the case in which the bond is filed, the names of principals and sureties on the bonds in alphabetical order, the date and amount of the bond and, upon its release, the date of the order or authority for the release;

(9) keep two books, in one of which must be entered in alphabetical order the names of all persons who from the organization of the court have declared, or who may hereafter declare, their intention to become citizens of the United States, and the date of the declaration. The book must be labeled "declaration of intention to become citizens of the United States"; in the other book must be entered in alphabetical order the names of all persons who have been, or may hereafter be admitted as citizens

of the United States by the court of which he is clerk; this book must be labeled "naturalization - final papers"; the clerk must enter in a separate column, opposite each name, the country of which the person was formerly a citizen or subject, the date of his admission, and the page of the minute book or book of record containing the order admitting him a citizen;

(10) keep a book, called "register of criminal actions", in which must be entered the title and number of the action, with a memorandum of every paper filed, order or proceeding had therein, with the date thereof, the name of every witness, and a proper index to the register;

(11) keep a book, called "register of probate and guardianship proceedings", in which must be entered the name of the estate; the register number; a memorandum of every paper filed, order, or proceeding had therein; with the date thereof; and the fees charged;

(12) keep an index book of persons committed to state institutions as provided in 38-208;

(13) keep a fee book, in which must be shown in an itemized form, all fees that he has received for any services rendered as clerk;

(14) keep a book called "book of jurors' certificates", in which must be contained the blank certificates and stubs to be filled, as provided in this code;

(15) keep a "witness book", in which must be contained blank certificates and stubs to be filled as provided in this code;

(16) keep a record of the attendance of all jurors, and of witnesses in criminal actions, number of days in attendance, witness fees, and compute the mileage of each;

(17) keep in a separate book a general index to court records and an inverse general index to court records. Each index shall be in the form prescribed by supreme court rule. Entries shall be made in each index as the progress of the case may require.

47A-8-504. JURORS. (1) Each county shall provide the district court with a jury list drawn as provided in Title 93, chapter 14.

(2) The officer or employee designated in 47A-8-503 shall receive the list and prepare jury boxes as provided in Title 93, chapters 14 and 15.

(3) The chief law enforcement administrator or employee of the local government shall summon jurors as provided in 93-1509.

(4) The county shall pay jurors' fees as provided in Title 25, chapter 4.

47A-8-505. WITNESSES. (1) The county shall pay witnesses as provided in Title 25, chapter 4.

(2) The officer or employee designated as provided in 47A-8-503 shall issue summons for witnesses as provided by law.

47A-8-506. COURT REPORTERS. (1) Each district court judge may appoint a court reporter as provided by 92-1906.

(2) The salary and expenses of the court reporter shall be paid by the county subject to the limits contained in 93-1906.

(3) If more than one county is included within the judicial district, the court reporter's salary and expenses shall be apportioned between the counties as provided in 93-1906.

47A-8-507. INTERPRETERS. (1) Whenever a party to or a witness in any criminal proceeding cannot speak or understand the English language, the court may appoint an interpreter.

(2) The county shall pay a reasonable fee for the services of an interpreter as the court may establish.

47A-8-508. PUBLIC DEFENDERS. Each county shall pay the compensation and expenses of counsel assigned to represent indigent criminal defendants as provided in 95-1005.

47A-8-509. YOUTH PROBATION OFFICER. Each county shall provide facilities for and pay the salaries and expenses of the youth court probation officer in the manner and subject to the limitations contained in 10-1234.

47A-8-510. SERVICE OF PROCESS. (1) Each county shall designate an officer or employee who shall:

(a) endorse all notices and processes with the year, month, day, hour, and minute of reception, and issue to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper, and time of reception;

(b) serve all process or notices in the manner prescribed by law; and

(c) certify by hand upon the process or notice the manner and time of service, or if there is a failure to make service, the reasons for the failure, and return the same without delay.

(2) The return of the designated officer or employee, upon process or notice, is prima facie evidence of the facts in such return stated.

CHAPTER 8, PART 6

ADMINISTRATIVE

47A-8-601. ASSESSMENT OF TAXES. (1) Each county shall designate a department, officer, or employee to perform the duties of assessor and to act as the agent of the state for the assessment of property for taxation as provided in Title 84.

(2) The county shall make reports as are required by the department of revenue.

47A-8-602. LEVY AND COLLECTION OF TAXES. (1) Each county shall levy all property taxes certified to it by the state, county, school district, authority, municipality, or other entity authorized by law to certify property taxes to a county for collection located wholly or partially within the county.

(2) If the jurisdictional area of the entity certifying the tax is less than county-wide, the tax shall only be levied on that part of the county that is within the jurisdictional area of the entity.

(3) All moneys collected by the county on the levies shall be deposited in the county trust and agency account until remitted to the certifying entity as provided by law.

47A-8-603. SCHOOL FINANCE. Each county, through its finance administrator, shall provide to school districts located within its boundaries the following services:

(1) keep all school moneys in a separate account and keep a separate accounting of their disbursement to the several school districts which are entitled to receive them according to the apportionment of the county school district officer or the officer or body who shall decide the apportionment;

(2) notify the officer or body of the amount of the county school account in the county treasury subject to apportionment, whenever required, and inform the officer or body of the amount of school moneys belonging to any other fund subject to apportionment;

(3) pay all warrants drawn on school district moneys in accordance with the provisions of law, whenever the warrants are countersigned by the district clerk and properly endorsed by holders;

(4) make annually during the month of September a financial report for the last preceding year ending with August 31 to the officer or body in the form as may be required by the officer or body; and

(5) comply with other financial requirements as are prescribed in Title 75.

47A-8-604. SCHOOL ADMINISTRATION. (1) Each county shall designate one or more departments, officers, or employees to perform the duties of county superintendent of schools as prescribed in Title 75, chapter 58.

(2) One or more departments, officers, or employees may be designated to serve in official positions required of the county superintendent of schools by Title 75, chapter 58.

47A-8-605. BOARD OF SCHOOL BUDGET SUPERVISORS. The governing body of the county shall constitute the board of school budget supervisors and in that capacity shall exercise the powers and duties prescribed in Title 75. The board may appoint the county school district officer as clerk of the board.

47A-8-606. ELECTIONS. (1) Each county shall provide for the registration of electors as provided in Title 23.

(2) Each county shall undertake all action and provide all facilities, materials, supplies, and personnel required by Title 23 to conduct state or other elections.

(3) Each county shall provide each municipality, school district, and authority with lists of registered voters and all other materials and assistance required by Title 23 for their elections.

47A-8-607. WEED CONTROL. (1) Each county shall provide for the control of noxious weeds.

(2) Noxious weeds are Canadian thistle (*cirsium arvense* L. Scop.), wild morning glory or bindweed (*convolvulus arvensis* L.), white top (*lepidium draba* L.), leafy spurge (*euphorbia virgata* waldst. and kit.), Russian knapweed (*centaurea pieris pallas.*), and other weed or weeds as may be defined and designated as a noxious weed by the county governing body, subject to the approval of the county extension agent or agricultural experiment station at Montana state university.

(3) The county shall levy a special assessment for the cost of controlling noxious weeds against the owner of the property on which the weeds are located except that the county may contribute up to one-third of the cost of controlling weeds on private property. The cost of controlling weeds on the right-of-way of a state or federal highway shall be levied against the state and paid from the state fund. The governing body of the county may levy a tax in the amount required to control noxious weeds.

(4) The governing body may create either an administrative board to administer the noxious weed control program or administer the program directly with or without an advisory board.

47A-8-608. PUBLIC ADMINISTRATOR. Each county shall designate one or more departments, officers, or employees to carry out the duties of the public administrator as established by Title 91, chapter 6.

47A-8-609. TAX APPEALS BOARD. (1) The governing body of each county shall appoint a county tax appeals board as provided in 84-601.

(2) The tax appeals board shall have the power and shall proceed as provided in Title 84, chapter 6.

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CHAPTER 9

LOCAL GOVERNMENT FINANCES

CHAPTER 1

LOCAL GOVERNMENT FINANCES

CHAPTER 9, PART 1

GENERAL PROVISIONS

47A-9-101. STRICT ACCOUNTABILITY. In accordance with Article VIII, section 12 of the Montana constitution, it is the purpose of this chapter to insure strict accountability of all local government finance through minimum statutory standards, state technical assistance and supervision, and effective local government management.

47A-9-102. LOCAL GOVERNMENT FINANCE ADVISORY COUNCIL. The department of community affairs shall establish a local government finance advisory council. The council shall include, but not be limited to, local and state officers and employees familiar with local government finance administration. It shall review and approve all rules pertaining to local government budgeting, accounting, and reporting systems prior to their adoption.

47A-9-103. TECHNICAL ASSISTANCE. The department of community affairs shall provide technical assistance upon request to local governments in order to improve the administration of local government finance.

47A-9-104. FINANCIAL RULES AND FORMS BY THE DEPARTMENT OF COMMUNITY AFFAIRS. (1) The department of community affairs shall adopt rules and forms for local government financial accounting, budgeting, and reporting procedures.

(2) The rules shall:

(a) permit the full utilization of a modern budgeting, accounting, and reporting system;

(b) provide a system of internal control;

(c) provide citizens, local government governing bodies, and officials with a greater measure of control over public moneys;

(d) enable the records of local governments to accurately reflect governmental cost and resources;

(e) provide for a uniform fund structure and chart of accounts which shall be utilized in all budgeting, accounting, and reporting systems; and

(f) coordinate the utilization of data processing systems for all local governmental purposes.

(3) The department shall, where practicable, utilize the standards and recommendations established by the national council of governmental accounting.

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47A-9-105. LOCAL FINANCE ORDINANCES. A governing body may adopt ordinances regulating local government financial administration. All ordinances must be consistent with the constitution of Montana, the laws of Montana, and the charter of the local government.

47A-9-106. ANNUAL COMPILATIONS BY DEPARTMENT OF COMMUNITY AFFAIRS. The department of community affairs shall reproduce annual compilations of:

- (1) local government budgets and mill levies; and
- (2) local government financial reports.

47A-9-107. AUDITS. The department of community affairs shall audit the affairs of local governments as provided in 82-4515 through 82-4529.

47A-9-108. GENERAL DEFINITIONS. In this title, unless otherwise provided or the context requires a technical or other interpretation, the following definitions apply:

(1) "Accounting system" means the total structure of records and procedures which discover, record, classify, and report information on the financial position and operations of a local government or any of its funds, balanced account groups, and organizational components.

(2) "Accrual basis" means the basis of accounting under which revenues are recorded when earned and expenditures are recorded as soon as they result in liabilities for benefits received, notwithstanding that the receipt of the revenue or the payment of the expenditure may take place, in whole or in part, in another accounting period.

(3) "Activity" means a specific and distinguishable line of work performed by one or more organizational components of a local government for the purpose of accomplishing a function for which the local government is responsible.

(4) "Appropriation" means the authorization granted by a governing body to make expenditures and to incur obligations for specific purposes.

(5) "Assess" means to value property officially for the purpose of taxation.

(6) "Assessment" means the process of making the official valuation of property for purposes of taxation.

(7) "Assessed value" means the value placed on property for tax purposes by the assessment procedure.

(8) "Audit" means the examination of documents, records, reports, systems of internal control, accounting, and financial procedures.

(9) "Bond payable" means the face value of a bond issued and unpaid.

(10) "Bond premium" means the excess of the price at which a bond is acquired or sold over its face value. The price does not include accrued interest at the date of acquisition or sale.

(11) "Budget" means a plan of financial operation embodying an estimate of proposed expenditures for a given period and the proposed means of financing them. An adopted budget shall be considered the appropriation for the ensuing fiscal year.

(12) "Callable bond" means a type of bond which permits the issuer to pay the obligation before the stated maturity date by giving notice of redemption in a manner specified in the bond contract.

(13) "Capital outlays" means expenditures which result in the acquisition of or addition to fixed assets.

(14) "Capital program" means the plan for capital expenditures to be incurred each year over a fixed period of years to meet capital needs arising from the long term work program or otherwise. It sets forth each project or other contemplated expenditure in which the government is to have a part and specifies the full resources estimated to be available to finance the projected expenditures.

(15) "Cash" means currency, coin, checks, postal and express money orders, and bankers' drafts on hand or on deposit with an officer or employee.

(16) "Cash basis" means the basis of accounting under which revenues are recorded when received in cash and expenditures are recorded when paid.

(17) "Character" means a basis for distinguishing expenditures according to the periods they are presumed to benefit.

(18) "Check" means a bill of exchange drawn on a bank and payable on demand or a written order on a bank to pay on demand a specified sum of money to a named person, to his order, or to bearer out of money on deposit to the credit of the maker.

(19) "Debt" means an obligation resulting from the borrowing of money or from the purchase of goods and services.

(20) "Debt service fund" means a fund established to finance and account for the payment of interest and principal on debt.

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(21) "Delinquent tax" means a tax remaining unpaid on and after the date on which a penalty for non-payment is attached. Even though the penalty may be subsequently waived and a portion of the tax may be abated or cancelled, the unpaid balance continues to be a delinquent tax until abated, cancelled, paid, or converted into a tax lien.

(22) "Disbursement" means payment in cash.

(23) "Effectiveness measure" means a criterion for measuring the degree to which the objective sought is attained.

(24) "Encumbrance" means an obligation in the form of a purchase order, contract, or salary commitment which is chargeable to an appropriation and for which a part of the appropriation is reserved. It ceases to be an encumbrance when paid or when the actual liability is set up.

(25) "Estimated revenue" means the amount of revenue estimated to be accrued during a given period regardless of whether or not it is all to be collected during the period.

(26) "Expenditures" means that where the accounts are kept on the accrual basis or the modified accrual basis, this term designates the cost of goods delivered or services rendered, whether paid or unpaid, including expenses, provision for debt retirement not reported as a liability of the fund from which retired, and capital outlays. Where the accounts are kept on the cash basis, the term designates only actual cash disbursements for these purposes.

(27) "Function" means a group of related activities aimed at accomplishing a major service or regulatory program of local government.

(28) "Fund" means an independent fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources together with all related liabilities, obligations, reserves, and equities which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

(29) "Fund accounts" means all accounts necessary to set forth the financial operations and financial position of a fund.

(30) "General fund" means a fund used to account for all transactions of a local government which are not accounted for in another fund.

(31) "General revenue" means the revenues of a local government other than those derived from and retained in an enterprise.

(32) "Grant" means a contribution by one governmental unit to another unit. The contribution is usually made to aid in the support of a specified function, but it is sometimes also made for general purposes.

(33) "Income" is a term used in accounting for governmental enterprises to represent the excess of revenues earned over the expenses incurred in carrying on the enterprise's operations.

(34) "Intergovernmental revenue" means the revenue received from other governments in the form of grants, shared revenues, or payments in lieu of taxes.

(35) "Internal control" means a plan of organization under which employees' duties are so arranged and records and procedures so designed as to make it possible to exercise effective accounting control over assets, liabilities, revenues, and expenditures. Under this system, the work of employees is subdivided so that no single employee performs a complete cycle of operations. Under this system, the procedures to be followed are definitely laid down and require proper authorization by designated officials for all actions to be taken.

(36) "Judgment" means an amount to be paid or collected by a local government as the result of a court decision, including a condemnation award in payment for private property taken for public use.

(37) "Levy" means to impose a tax, special assessment, or service charge for the support of a governmental activity, or the total amount of taxes, special assessments, or service charges imposed by a governmental unit.

(38) "Modified accrual basis" means the basis of accounting under which expenditures other than accrued interest on general long-term debt are recorded at the time liabilities are incurred and revenues are recorded when received in cash, except for material and available revenues which should be accrued to reflect properly the taxes levied and the revenues earned.

(39) "Object" means (as used in expenditure classification) the article purchased or the service obtained (as distinguished from the results obtained from expenditures).

(40) "Obligation" means the amount which a local government may be required legally to meet out of its resources. It includes not only actual liabilities, but also unliquidated encumbrances.

(41) "Performance budget" means a budget wherein expenditures are based primarily upon a measurable performance of activities and work programs. A performance budget may also incorporate other bases of expenditure classification, such as character and object, but these are given a subordinate status to activity performance.

(42) "Priority listing" means a ranking of proposed expenditures in order of importance.

(43) "Program" means a combination of resources and activities designed to achieve an objective or objectives.

(44) "Program budget" means a budget wherein expenditures are based primarily on programs of work and secondarily on character and object.

(45) "Program size" means the magnitude of a program such as the size of clientele served, the volume of service in relation to the population or area, or any other criteria as considered appropriate.

(46) "Program size indicator" means a measure to indicate the magnitude of a program.

(47) "Purchase order" means a document which authorizes the delivery of specified merchandise or the rendering of certain services and the making of a charge for them.

(48) "Registered bond" means a bond whose owner is registered with the issuing local government and which cannot be sold or exchanged without a change of registration. The bond may be registered as to principal and interest or as to principal only.

(49) "Registered warrant" means a warrant which is registered by the finance administrator for future payment because of present lack of funds and which is to be paid in the order of its registration.

(50) "Requisition" means a written demand or request, usually from one department to the purchasing officer or to another department, for specified articles or services.

(51) "Reserve" means an account which records a portion of the fund balance which must be segregated for some future use and which is, therefore, not available for further appropriation or expenditure.

(52) "Resources" means the actual assets of a local government such as cash, taxes receivable, land, buildings, and other assets, plus contingent assets such as estimated revenues applying to the current fiscal year not accrued or collected and bonds authorized and unissued.

(53) "Revenue" means designated additions to assets which:

(a) do not increase any liability;

(b) do not represent the recovery of an expenditure;

(c) do not represent the cancellation of certain liabilities without a corresponding increase in other liabilities or a decrease in assets; and

(d) do not represent contributions of fund capital in enterprise and intragovernmental service funds. The same definition applies to those cases where revenues are recorded on the modified accrual or cash basis, except that additions would be partially or entirely to cash.

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(54) "Serial annuity bond" means a bond in which the annual installments of bond principal are so arranged that the combined payments for principal and interest are approximately the same each year.

(55) "Serial bond" means a bond the principal of which is repaid in periodic installments over the life of the issue.

(56) "Shared revenue" means revenue which is levied by one governmental unit but shared, usually in proportion to the amount collected, with another unit of government or class of government.

(57) "Special assessment" means a compulsory levy made by a local government against certain properties to defray part or all of the cost of a specific improvement or service which is presumed to be of general benefit to the public and of special benefit to certain properties.

(58) "Straight serial bond" means a bond in which the annual installments of bond principal are approximately equal.

(59) "Taxable value" means the portion of the assessed value of property which is subject to taxation.

(60) "Warrant" means an order drawn by the financial administrator upon the local government directing payment of a specified amount to the person named or to the bearer. It may be payable upon demand, in which case it usually circulates the same as a bank check; or it may be payable only out of certain revenues when and if received, in which case it does not circulate as freely. As used in this title, "warrant" shall include "check/warrant".

CHAPTER 9, PART 2

BUDGET AND APPROPRIATION

47A-9-201. PURPOSE. It is the intent of the legislature to authorize and encourage the transition to a program and performance budgeting system.

47A-9-202. BUDGET ADMINISTRATOR. The authority to prepare the budget is vested in the officer or officers specified in the form of government. Such officer or officers are designated the budget administrator.

47A-9-203. TRANSITION. Local government budgets for fiscal year 1978 shall be adopted under the procedures provided in Title 16, chapter 19; Title 11, chapter 14; and rules promulgated by the department of community affairs; but budgets so adopted shall be administered under the provisions of this title. The mill levies adopted for fiscal year 1978 may exceed the statutory annual mill levy limits by 25% to fund the three month transitional period.

47A-9-204. FISCAL YEAR DEFINED. After September 30, 1978, the fiscal year of all local governments shall begin October 1, and end September 30. For purposes of transition, fiscal year 1978 shall consist of the 15 months from July 1, 1977 to September 30, 1978.

47A-9-205. BUDGET INFORMATION AND ESTIMATES. (1) On or before June 1, the budget administrator shall issue a statement of governmental goals and objectives and obtain from each department head his estimate of resources and expenditures for the following fiscal year, a departmental statement of goals and objectives, and other information required for budget preparation.

(2) The department of community affairs shall report to each local government budget administrator on or before June 1 an estimate of all state shared revenues and grants that will be distributed to the local government in the ensuing local government fiscal year.

47A-9-206. BUDGET PREPARATION. (1) Each local government shall adopt an annual budget which presents a complete financial plan for the ensuing fiscal year.

(2) The budget shall:

(a) set forth all proposed appropriations of each department or program including publicly-owned utilities and enterprises;

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(b) set forth the appropriations and actual or estimated expenditures and resources from the two preceding fiscal years;

(c) set forth all debt redemptions and interest charges during the budget year;

(d) set forth proposed appropriations for capital projects to be undertaken or executed during the budget year;

(e) set forth all anticipated revenue and all other resources;

(f) set forth proposed contingency funds; and

(g) set forth proposed reserves.

(3) The budget administrator shall prepare a budget message to be submitted with the proposed budget. The budget message shall include:

(a) a statement of department goals and objectives and a statement of goals and objectives for each program;

(b) an evaluation of how effective each program has been in the past and the apparent reason for the level of success attained;

(c) a general summary setting forth the aggregate figures of the proposed budget and matching proposed appropriations and anticipated resources;

(d) a statement contrasting the proposed budget appropriations, resources, and expenditures for the two preceding fiscal years; and

(e) explanatory material which classifies the proposed program appropriations by fund, function, activity, object, and department and anticipated resources by source.

(4) The budget may anticipate the collection of delinquent taxes, and anticipated tax revenue may be reduced by anticipated delinquent taxes.

(5) The budget may include funds for contingencies. These funds may be appropriated only by resolution.

(6) The budget may include a reserve to meet expenditures to be made during the months of September and November. The reserve may not exceed 1/3 of the total proposed budget.

47A-9-207. SUBMISSION AND PUBLIC HEARING. (1) The budget administrator shall submit the proposed budget to the local government governing body on or before the last Monday of July.

(2) Upon receipt of the proposed budget, the governing body

DRAFT

of the local government shall publish notice including:

(a) a statement that the proposed budget is available for distribution and inspection at the office of the local government;

(b) a summary of the proposed budget showing the balanced relationship between the total proposed expenditures and total anticipated revenue, anticipated mill levies, and comparative information for the two preceding fiscal years;

(c) the date, time, and place of the public hearing on the proposed budget; and

(d) a statement that the governing body shall adopt a budget on or before the last Friday of August.

(3) The public hearing shall be held on or before the third Monday of August.

47A-9-208. ADOPTION OF BUDGET. (1) The governing body shall review the proposed budget and at its discretion may revise the budget.

(2) After consideration the governing body shall by resolution adopt a budget on or before the last Friday of August.

(3) Expenditures authorized by the budget shall not exceed anticipated resources.

(4) The resolution adopting the budget shall be considered as the appropriation for the ensuing fiscal year.

(5) The approved budget shall be reproduced and made available for general distribution.

47A-9-209. FIXING LEVIES. On or before the last Friday of August and after the adoption of the budget, the governing body shall fix by resolution each property tax levy at a rate, not exceeding limits prescribed by law or charter, that will raise the amount set out in the budget as the amount necessary to be raised by property taxes during the ensuing fiscal year.

47A-9-210. FILING OF BUDGET. (1) The chief executive shall file a certified copy of the adopted budget and mill levies with the department of community affairs and a certified copy of the mill levies with the county finance administrator no later than 7 days after the adoption of the budget.

(2) The chief executive shall file a certified copy of all budget amendments, appropriation transfers, and emergency appropriations with the department of community affairs within 30 days after their adoption.

47A-9-211. UNEXPENDED APPROPRIATIONS. (1) After September 30 of each fiscal year, all unexpended appropriations, except encumbered

moneys, shall revert to the account from which originally appropriated and may not be expended until reappropriated.

(2) (a) When the governing body determines by resolution that the purpose for which a separate fund was established no longer exists, the governing body may eliminate the fund and the net resources shall be deposited as miscellaneous revenue to the general fund of the local government.

(b) The governing body shall give notice, hold a public hearing, and adopt a resolution prior to the elimination of a fund.

47A-9-212. APPROPRIATION TRANSFERS. (1) Within a program or department the chief executive may revise and transfer appropriations.

(2) The governing body may approve the reallocation of appropriations between departments and programs by resolution.

(3) The governing body may rescind or defer any appropriation in whole or in part by resolution. Rescinded appropriations may be transferred to the contingency fund.

47A-9-213. BUDGET AMENDMENT. (1) The governing body may by resolution amend the budget with the appropriate loans, grants, the proceeds of bond sales, and other revenues received after the adoption of the budget.

(2) After notice, the governing body shall hold a public hearing on all proposed budget amendments.

(3) The revenues may not be expended until the budget amendment is adopted.

47A-9-214. EMERGENCY APPROPRIATIONS. (1) In the case of an emergency which was not foreseen at the time of the adoption of the budget, the governing body may by resolution authorize additional appropriations by two-thirds vote of the whole governing body.

(2) The authorizing resolution shall be published once and shall be included with facts concerning the emergency in the minutes of the meeting at which the governing body adopted the resolution.

47A-9-215. FINANCING FOR EMERGENCY APPROPRIATIONS. (1) In the case of an emergency appropriation, the governing body shall transfer from any unencumbered appropriation any resources which, in the judgment of the governing body, will not be needed for expenditures in the balance of the fiscal year to the fund from which the emergency expenditure is to be paid.

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(2) If sufficient resources which can be transferred are not available to meet the authorized emergency appropriation, the governing body may register warrants. The total amount of the registered warrants shall not exceed the amount that can be raised by a two mill levy. An appropriation to retire these registered warrants shall be included in the budget for the ensuing fiscal year.

47A-9-216. ANNUAL REPORT. On or before December 1, the chief executive of the local government shall submit to the department of community affairs and the governing body a certified annual report in the form prescribed by the department of community affairs.

47A-9-217. INTERIM BUDGET. In case the adoption of the budget resolution is delayed until after October 1, the governing body shall make interim appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local government for the interval between the beginning of the fiscal year and the adoption of the budget resolution. Interim appropriations so made shall be charged to the proper appropriations in the budget resolution.

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LOCAL GOVERNMENT FINANCIAL ADMINISTRATION

47A-9-301. GENERAL PROVISIONS. (1) The governing body shall allocate the responsibilities for financial administration established by this chapter by ordinance.

(2) All of the responsibilities of the finance administrator may be allocated to a single department or elected officer, or they may be allocated to separate department heads or elected officers.

(3) Any allocation for responsibility for financial administration shall provide for internal controls.

(4) The finance administrator shall perform the duties of the treasurer as provided by law.

47A-9-302. TRUST AND AGENCY. (1) The county governing body shall provide by ordinance for the administration of school finance functions that are a responsibility of the county.

(2) (a) The governing body shall provide by ordinance for the collection, security, and disbursement by the finance administrator of state, municipal, authority, and other moneys as provided by law or ordinance.

(b) Trust and agency moneys received by the finance administrator for other governmental entities shall be transmitted on a timely basis.

(3) The municipal governing body may, by interlocal agreement, contract with the county for the provision of municipal financial administration.

47A-9-303. ACCOUNTING AND REPORTING. The finance administrator shall be responsible for:

(1) operation of the uniform budgeting, accounting, and reporting systems specified by the department of community affairs;

(2) providing information on financial transactions to the chief executive and the governing body at their request;

(3) keeping a record showing revenues received by the local government;

(4) keeping a record showing the resources appropriated by the adopted budget and the warrants drawn against the appropriations;

(5) keeping a record of the transfer of appropriations and of any authorized emergency appropriations;

DRAFT

(6) keeping records showing at all times the unexpended balance in each of the budgeted funds;

(7) submitting a report to the governing body at its first meeting of the month showing the revenues and expenditures to date and the unexpended balance in each of the appropriated funds;

(8) submitting the annual financial report to the chief executive on or before November 1; and

(9) providing the budget administrator with information on resources, revenues, expenditures, and debt necessary for preparation of the proposed budget.

47A-9-304. CASH MANAGEMENT. (1) Beginning with fiscal year 1981, the finance administrator shall prepare and submit to the chief executive a cash management plan by October 1 of each fiscal year.

(2) The department of community affairs shall provide local governments technical assistance on request in the administration of cash management plans.

47A-9-305. TREASURY FUNCTIONS. (1) The finance administrator shall be responsible for and may delegate the duties of:

(a) receiving and accounting for all moneys received by the local government;

(b) providing a receipt for all moneys received by the local government;

(c) custody of moneys and securities of the local government;

(d) disbursement of moneys of the local government upon proper authorization, including the payment of all warrants presented for payment in the order in which they are presented, when there are sufficient moneys in the fund; and

(e) maintaining the integrity of bond and other dedicated funds.

(2) As authorized by law or ordinance, local government departments and officers may receive and account for moneys paid to the local government.

(a) Each officer or department shall provide a receipt for all moneys received.

(b) All moneys collected by any other officer or department shall be deposited on a timely basis with the finance administrator.

DRAFT

47A-9-306. DEPOSIT AND INVESTMENT OF PUBLIC MONEYS. (1)
The finance administrator of each local government shall deposit all public moneys in his possession or under his control in a bank, building and loan association, or savings and loan association subject to state or national inspection, and designated by resolution of the governing body.

(2) The finance administrator may provide for the investment of public moneys not necessary for immediate use by the local government in any of the following manners:

(a) in time or savings deposits with any bank, building and loan association, or savings and loan association subject to state or national inspection. Such deposits may be made either:

(i) on a pro rata basis, based on the amount of property tax paid in the preceding year, in all such institutions which are willing to accept public moneys and are located within the local government; or

(ii) on the basis of bids by the institutions within the local government, provided that if there are less than two institutions within the county, the governing body may solicit bids from institutions in adjoining counties. If an institution located within the local government agrees to pay the same rate of return as an institution without the local government, the funds shall be deposited with the institution within the local government.

(b) in any of the securities enumerated in 79-310;
or

(c) in the state investment fund as provided in 79-311.

(3) (a) No deposits of public moneys may be made in any bank, building and loan association, or savings and loan association until the governing body has approved securities equal to the amount of deposits in excess of the amount insured by federal law.

(b) The governing body shall approve as security only items enumerated in 79-307.

(c) Securities for local government deposits shall be delivered to the finance administrator of the local government, except that when negotiable securities are furnished, the securities may be placed in trust and the trustee's receipt may be accepted when the receipt is in favor of the local government and the state of Montana. The department of community affairs shall approve the form for the receipts, the quality of securities, and their release.

DRAFT

(d) All negotiable securities must be properly assigned or endorsed in blank.

(e) The governing body upon acceptance and approval of securities shall make a complete entry of the acceptance and approval in the minutes and shall reapprove the securities at least quarterly thereafter.

(4) Interest on local government moneys invested shall be taken up into the accounts in the manner provided by ordinance.

(5) When public moneys have been invested or deposited as provided, neither the finance administrator nor the governing body or its members shall be liable for any loss occasioned through means other than their neglect, fraud, or dishonorable conduct.

(6) The department of community affairs and the department of administration shall provide a local government assistance on request in the investment of public moneys.

47A-9-307. PETTY CASH. (1) The finance administrator may establish a petty cash fund, with the consent of the governing body, for the purpose of paying incidental expenses as provided by ordinance.

(2) Each department shall provide the finance administrator an accounting of the expenditures from the account on a monthly basis. The account may be replenished at the discretion of the finance administrator.

47A-9-308. EXPENDITURES. (1) The finance administrator of each local government shall be responsible for the proper expenditure of appropriations.

(2) No contract, requisition, purchase order, or agreement requiring the payment of money may be made unless an appropriation appears in the approved budget and a sufficient unencumbered balance remains in the appropriation.

(3) All verified invoices shall be paid by warrant. The form of the warrant shall be approved by the department of community affairs.

(4) All invoices shall be verified prior to their submission to the finance administrator by:

(a) the claimant that the goods or services have been delivered to the local government; and

(b) the officer or employee charged with administering that portion of the appropriation to which it is to be charged, that

DRAFT

goods or services were received by the local government.

(5) Claims against the local government shall be valid for only one calendar year from the date of the receipt of the claim by the local government. This provision shall not apply to registered warrants issued by the local government.

(6) All warrants shall be signed and issued by the finance administrator and countersigned by the chief executive or by the chairman in the commission form.

(7) (a) When any warrant is presented to the finance administrator for payment and there are insufficient moneys in the funds in the account on which the warrant was drawn, he shall register the warrant.

(b) The finance administrator shall endorse on the warrant "not paid for insufficient moneys", the date of presentation, and sign his name. From the date of presentation until it is called for payment, the warrant shall bear interest at a rate fixed by resolution.

(c) The finance administrator shall record the date of presentation, the number, the date of the warrant, to whom payable, the fund on which drawn, and the amount of the warrant.

(d) Registered warrants shall be paid in order of registration, and no subsequent warrants may be paid from the same fund unless all registered warrants are paid.

(e) When there are sufficient moneys in the local government treasury applicable to the payment of any registered warrants, the finance administrator shall give notice that he is ready to pay the registered warrants and give the numbers of the warrants to be paid. From the time of notice the registered warrants will cease to draw interest.

(f) Warrants issued for the payment of the local government payroll shall be drawn by the finance administrator on the order of the chief executive.

47A-9-309. PURCHASING. (1) (a) All local government purchases of any kind, except for purchases made from petty cash, shall be by purchase order. Purchase orders may be issued directly, following solicited bids, or following public bids.

(b) A purchase order may be issued by the chief executive or by any other officer or employee of the local government whom the chief executive designates as the purchasing administrator.

(2) Purchase orders may be issued directly for purchases not exceeding \$5,000.

(3) (a) Purchase of orders may be issued for purchases exceeding \$5,000 and not exceeding \$10,000 only after solicitation of bids.

(b) Any person, firm, or corporation which wishes to receive solicitations for bids shall file with the governing body of the local government a request for solicitations stating which items or types of items it is interested in bidding on. Whenever an item listed in a request for solicitations is to be purchased by solicited bid, all such persons, firms, and corporations shall be notified.

(c) If a person, firm, or corporation which has requested notice of solicitations fails for a period of 1 year to respond to any solicitations, the request for solicitations may be cancelled by the local government.

(d) The local government may solicit bids from other persons, firms, and corporations which have not requested solicitations. Except as provided in 47A-9-310 and subject to the governing body's right to reject any or all bids, the purchase shall be made from the lowest and most responsible bidder. If the lowest bid is not accepted, the reasons shall be entered in the minutes.

(4) (a) A purchase order may be issued for a purchase of more than \$10,000 only after public bid.

(b) The governing body shall give notice calling for bids on all purchases required to be by public bid. The notice shall describe in general terms the item or items to be purchased, state where a copy of the detailed description may be obtained, and state the last date on which the bid will be accepted.

(c) The purchase shall be made from the lowest and most responsible bidder subject to the requirements of 47A-9-310, except that the governing body may reject any or all bids. If the lowest bid is not accepted, the reasons shall be entered in the minutes.

(5) The governing body may, in its discretion, use solicited bids for purchases of less than \$5,000 and public bids for purchases of less than \$10,000.

(6) Local governments shall not circumvent the provisions of this section by dividing into several parts a purchase which constitutes an integral whole.

(7) Bids and tenders shall comply with 6-501.

(8) The governing body may by resolution approve the purchase of an item or items of any kind from federal and state agencies and local governments.

(9) The purchasing administrator may enter into an agreement with the department of administration to utilize the services of the state purchasing bureau.

(10) A contract for the rental or lease of any item or items

DRAFT

which provides that after a certain fixed amount has been paid on the contract the item or items becomes the property of the local government shall be considered a contract for the purchase of the item or items.

(11) Performance bonds shall comply with 6-401.

47A-9-310. MONTANA CONTRACTORS, MATERIALS, AND LABOR. (1) In awarding contracts, a local government shall award the contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than 3% higher than that of the lowest responsible bidder who is a nonresident of the state.

(2) In making purchases, a local government shall purchase equipment, materials, or supplies manufactured or produced in this state by Montana industry and labor, provided that the cost is no more than 3% higher than that of such equipment, materials, or supplies not so manufactured or produced, and provided that such equipment, materials, or supplies are comparable in quality and performance.

(3) Any contract awarded by a local government shall contain a provision that Montana labor and products produced or manufactured in the state by Montana labor and industry shall be used whenever the labor or the products are available and comparable in skill or in price, quality, and performance. Failure to comply with this subsection shall disqualify the contractor from future contracts with the state of Montana and its subdivisions for a period of 2 years.

(4) Montana labor shall be hired subject to the terms and conditions set out in 41-701.

(5) The residency of bidders shall be determined by the department of revenue as provided in 82-1925.1.

47A-9-311. EXEMPT PURCHASES. (1) Personnel may be employed in the manner provided in chapter 4, part 2 of this title.

(2) Legal, engineering, and other professional and technical services may be purchased without complying with 47A-9-309.

(3) Real estate may be purchased without complying with 47A-9-309.

47A-9-312. PROPERTY CONTROL. The chief executive of the local government shall annually conduct a physical inventory of the fixed assets of the local government.

47A-9-313. SALE AND LEASE OF PROPERTY. (1) A local government may sell, lease, exchange, or otherwise dispose of any interest in either real or personal property acquired other than by tax deed.

DRAFT

(2) The governing body shall approve all sales, leases, exchanges, or other dispositions of local government property by resolution.

(3) (a) If the property interest to be sold, leased, exchanged, or otherwise disposed of has an estimated value of more than \$500, the governing body shall have the property appraised and give notice of the sale, lease, exchange, other disposition, the terms, and that bids will be accepted on the property.

(b) At the regular meeting of the governing body following the closing of bids, the governing body shall examine the bids offered and order the property sold or leased to the highest or most responsible bidder. The governing body may reject any or all bids.

(4) Subsection (3) shall not apply to a sale, lease, or exchange to or between two political subdivisions of the state or between a local government and a state or federal agency or to a sale or exchange which is made as a part of a contract to purchase similar property by the local government or to a lease which is approved by a two-thirds vote of the entire governing body.

(5) The governing body may establish a schedule of rents and charges for the use of public property by ordinance.

(6) A local government shall not circumvent the provisions of this section by dividing into several sales any transaction which constitutes an integral whole.

(7) Proceeds from the sale, lease, or other disposition of property shall be taken up into the accounts as provided by ordinance.

47A-9-314. EXCESS EXPENDITURES NOT LIABILITY OF LOCAL GOVERNMENT; PERSONAL LIABILITY OF OFFICER. Liabilities incurred in excess of any of the budget appropriations are not a liability of the local government; but the official or employee making or incurring the expenditure in an amount known by him to be in excess of the unencumbered balance of the appropriation against which it is drawn is liable personally and upon his official bond.

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CHAPTER 9, PART 4

SOURCES OF REVENUE FOR LOCAL GOVERNMENTS

WITH GENERAL GOVERNMENT POWERS

47A-9-401. PURPOSE. It is the purpose of this chapter to grant local governments with general government powers authority to finance local government services and facilities.

47A-9-402. FUNDING OF MANDATED STATE SERVICES AND FACILITIES.

(1) Any law enacted by the legislature after January 1, 1977, which imposes additional costs on a local government to provide a service or facility, must provide a specific means to finance the service or facility other than the existing all-purpose mill levy. Any law that fails to provide a specific means to finance any service or facility other than the existing all-purpose mill levy shall not become effective until specific means of financing are provided by the legislature.

(2) The legislature may provide for an increase in the all-purpose mill levy, special mill levies, or remission of moneys by the state of Montana to local governments; however, an increase in the all-purpose mill levy or any special mill levy must provide an amount necessary to finance the additional costs, and if financing is provided by remission of moneys by the state of Montana, the remission shall bear a reasonable relationship to the cost of providing the service or facility.

(3) The local government may refuse to comply with or enforce any law which does not meet the requirements of this section by resolution.

(4) No subsequent legislation shall be considered to supersede or modify any provision of this section, whether by implication or otherwise, except to the extent that the legislation shall do so expressly.

47A-9-403. SOURCES OF REVENUE. Local governments with general government powers are authorized to finance any services and facilities from:

(1) taxes;

(a) The governing body may impose only those taxes authorized by state law.

(b) The taxes shall be levied and collected as provided by state law.

(2) licenses and permits;

(a) The governing body may by ordinance provide for the licensing of any activity, event, industry, business pursuit, profession, and occupation and may issue permits for activities subject to local government regulation.

(b) The governing body shall establish by ordinance the amount for each kind or class of license or permit, the manner in which licenses and permits are issued and revoked, and the penalties for failure to comply with license and permit requirements.

(3) intergovernmental revenues;

(a) The governing body may receive, budget, and appropriate grants, shared revenues, and payments-in-lieu of taxes.

(b) Intergovernmental revenues may be expended only for specified purposes if any.

(4) charges for services;

(a) The governing body may impose a charge by ordinance for any service which it provides and provide a method of collection. Charges for services may be entered on tax notices to be collected with other taxes. If a property owner fails to pay the charge for service, it shall become a lien on the property.

(b) The charges may be used to recover all or any part of the cost of providing the services. The governing body may establish differing charges for various classes of users.

(c) Subject to approval by the public service commission when required, service charges shall be established at a rate or rates which are reasonably calculated to recover no more than the cost of providing the service. In determining the cost of providing a service, the governing body may include such items as actual operating expenses, debt retirement, replacement of equipment or physical plants, reserves, and general administrative costs.

(d) The governing body may impose and establish charges for the provision of specific services delivered to public and private tax exempt entities.

(5) fines and forfeitures;

(a) The governing body may by ordinance establish fines for the violation of ordinances.

(b) The governing body may receive, budget, and appropriate fines and forfeitures authorized by ordinance or state law.

(c) The governing body may provide for the forfeiture of performance bonds and other deposits by ordinance.

(6) interest earning;

(a) The governing body may budget and appropriate interest earnings on public moneys.

(b) Interest earnings shall be credited to a fund or funds as provided by ordinance.

(7) rents and royalties;

DRAFT

(a) The governing body may by ordinance establish rents and rent schedules for local government equipment, facilities, and property.

(b) The governing body may budget and appropriate rents and royalties due the local government.

(8) special assessments;

(a) The governing body may levy a special assessment against the property within a service district or local improvement district.

(b) The special assessment within a subordinate service district shall not exceed an amount sufficient to pay the cost of the service together with the amount paid by district taxes, service charges, appropriations of the general resources, and other available revenue.

(c) The special assessment within a local improvement district shall not exceed the amount established in the payment plan adopted under 47A-3-427.

(9) sales of and compensation for loss of fixed assets;

(a) The governing body may receive, budget, and appropriate from the sale of fixed assets and proceeds from compensation for loss of fixed assets.

(b) Compensation for loss of fixed assets shall be deposited to the fund from which the lost asset was purchased.

(10) public enterprise charges;

(a) The governing body may receive, budget, and appropriate proceeds of public enterprises only for enterprise purposes, except as provided herein.

(b) The governing body may provide for the reimbursement of public enterprise costs subsidized by general government revenue by ordinance.

(c) Any moneys not necessary for the operation, maintenance, or service of debt may be transferred to the general fund by ordinance.

(11) contributions and donations from private sources;

(a) The governing body may receive, budget, and appropriate contributions and donations from private sources.

(b) The governing body may comply with any condition of the contribution or donation that is not contrary to the public interest.

DRAFT

(12) premiums on bonds sold and proceeds from sale of bonds;

(a) The governing body may receive, budget, and appropriate premiums on bonds sold, proceeds from the sale of bonds, and accrued interest, if any.

(b) Proceeds from bond premiums, the sale of bonds, and accrued interest, if any, shall be expended only for the purposes for which the bonds were authorized or for the retirement of the debt.

47A-9-404. PROPERTY TAXES. (1) A local government is granted the authority to impose ad valorem taxes on real and personal property within the boundary or municipal limits of the local government.

(2) Property taxes shall be levied against the taxable value of the property as established and equalized by the state.

(3) The governing body of a local government with general government powers is authorized to levy the following property taxes each fiscal year:

(a) (i) for counties, an all-purpose tax not exceeding 55 mills;

*(ii) for municipalities, an all-purpose tax not exceeding 65 mills [75 mills];

(b) for counties, a tax for constructing, maintaining, and improving trafficways not exceeding 18 mills. This tax shall not be levied in municipalities unless the governing body of the municipality has authorized the county to levy the tax in lieu of a municipal appropriation from the all-purpose tax levy for trafficways;

(c) for counties and municipalities, a tax for paying the interest and principal due during the fiscal year and reserves as necessary on each series or issue of outstanding general obligation bonds. The levy must be high enough to raise an amount sufficient to pay all interest and principal of the bonds as will become due and payable during the ensuing fiscal year and to establish reserves as necessary;

(d) for counties and municipalities, a tax for paying any judgment against the local government if there is insufficient moneys available from the all-purpose tax to pay the judgment. Payments for judgment may be prorated for a period of 3 years from its presentation;

*[The municipal all-purpose mill levy limit should be increased to 75 mills if the local option taxes in 47A-9-405 through 47A-9-407 are not approved or if subsections (g), (h), and (k) of this section are eliminated.]

DRAFT

(e) for counties and municipalities, a tax to maintain a local improvement district revolving fund at an amount not exceeding 5% of the principal and interest on outstanding local improvement bonds;

(f) for counties and municipalities, a tax to pay premiums for comprehensive insurance as authorized in 82-4309;

*(g) for counties and municipalities, a tax not exceeding 4 mills for the fire department relief association fund when the cash balance of the fund is less than 2% of the taxable value of the property within the local government;

*(h) for counties and municipalities, a tax not exceeding 3 mills for the police reserve fund if the obligations against the fund cannot be met by the all-purpose mill levy;

(i) for counties and municipalities, a tax to finance services provided in subordinate service districts levied only on property within the district;

(j) for counties and municipalities, a tax not exceeding the amount or the mill levy limit established by vote of the electors on a voted mill levy approved by the electors in a special or general election; or

*(k) for counties and municipalities, a tax not exceeding 2 mills for emergency purposes as authorized in 47A-9-215.

47A-9-405. LOCAL INCOME TAX. (1) (a) Any county with general or self-government powers is authorized to impose a local income tax on its residents and on all other persons earning or receiving income from activities carried out in the county not exceeding 20% of an individual's state income tax liability.

(b) The income tax may be imposed or repealed only after an affirmative vote of the electors of the county.

(c) The question may be presented to the electors of the county by:

(i) a petition of the electors of the county; or

(ii) a resolution of a governing body of a municipality of the county; or

(iii) a resolution of the governing body of the county.

*[Subsections (g), (h), and (k) could be eliminated and obligation paid from the all-purpose fund.]

DRAFT

(d) The question shall be presented in substantially the following form:

☐ for the local government income tax

☐ against the local government income tax.

(2) (a) "Resident". A resident of a county for purposes of determining liability for the income tax is an individual who is domiciled in that county and does not maintain a permanent place of abode elsewhere and spends in the aggregate not less than 30 days of the taxable year in the county; or who is not domiciled in the county but maintains a permanent place of abode in the county and spends in the aggregate more than 183 days of the taxable year in the county.

(b) "Nonresident". A nonresident is anyone who is not a resident.

(3) (a) The rate of the income tax shall be determined by ordinance. The governing body of the county shall certify the rate of the tax to the department of revenue on or before October 1.

(b) The governing body of a county imposing an income tax may suspend for any fiscal year the collection of the county income tax only after first giving at least 120 days notice of the suspension to the department of revenue. The suspension shall be effective the first day of the next calendar year. The suspension shall not impair the authority of the county to impose the tax in subsequent years.

(4) The income tax authorized under the provisions of this title in any county shall be administered by the department of revenue under rules adopted by the department. Moneys collected under the local income tax shall be accounted for separately and shall be paid into a separate fund to be distributed to the counties imposing the tax after deducting an amount no more than 1% to cover necessary costs incurred by the department of revenue in administering the local income tax. The rules for the administration of the state income tax shall apply to the local income tax except when, in the judgment of the department of revenue, the rules would be inconsistent or not feasible for proper administration. The department of revenue is authorized to make refunds to taxpayers pursuant to this section.

(5) In the case of a nonresident, the local income tax liability shall be limited solely to his place of employment, provided such jurisdiction imposes a local income tax. One-half of the tax imposed by the jurisdiction of employment shall be credited by the department of revenue to the nonresident's place of residence provided the jurisdiction also imposes the local income tax.

In the event the nonresident lives in a county that does not impose a tax but earns income in a county that does impose a tax, the department of revenue shall credit the total net proceeds of the nonresident's tax liability exclusively to the jurisdiction of employment. In the event the nonresident works in a county that does not impose a local income tax, but resides in a jurisdiction which does impose such a tax, the department of revenue shall credit the proceeds of the local income tax exclusively to the jurisdiction of residence.

(6) (a) All revenues collected pursuant to this section shall be credited to a special local income tax fund which is hereby established in the state treasury. After deducting the amount of refunds made, a reserve for expected or anticipated refunds, and the costs of administering the tax, the remaining sums shall be distributed by the department of community affairs to the county of origin on a quarterly basis.

*(b) The county finance administrator shall distribute the revenues received from the income tax to the local government of origin. The department of community affairs shall provide the necessary information to the county finance administrator for the proper distribution of the revenue.

OR

(b) The county finance administrator shall distribute the revenues received from the income tax to the local governments in the county in the same proportion that their populations bear to the county total. The population of the county shall include only those county residents not residing in an incorporated municipality.

OR

(b) The county finance administrator shall distribute the revenues received from the income tax to the local governments in the county in the same proportion that their taxable valuations bear to the combined taxable value of each municipality and the county.

OR

(b) The county finance administrator shall distribute the revenues received from the income tax to the local government in the county in the same proportion that their property taxes collected for the previous fiscal year bear to the total property taxes collected in the county.

*47A-9-405 (6) (b) is provided in alternative language for discussion purposes.

47A-9-406. MOTOR VEHICLE LICENSE FEES. (1) A governing body of a local government may by ordinance impose a license fee up to 50% of the motor vehicle license fees established in 53-122.

(2) The registrar of motor vehicles shall by rule provide for the collection by counties of the license fee and the distribution of proceeds to counties and municipalities imposing the license fee.

(3) The revenue shall be used for the construction, repair, and maintenance of trafficways within the local government boundary or municipal limits which are not either state or federal highways.

47A-9-407. SELECTIVE EXCISE TAXES. A governing body of a local government with general or self-government powers may impose the following selective excise taxes by ordinance:

(1) (a) A tax on the use of hotel or motel facilities, as defined in 34-302(d), shall not exceed 10% of the room rental.

(b) The imposing local government shall provide for the administration and the collection of this tax.

(2) (a) A tax on the purchase of electricity, metered or bottled gas, natural gas, liquified petroleum gas or manufactured gas, fuel oil, water service, telephone service, telegraph service, and cable television service, shall not exceed 1% of the sale price to the ultimate consumer.

(b) The department of revenue shall by rule provide for the administration, collection, and disbursement to the taxing jurisdiction of this tax by the utility or service provider.

(3) A tax on the receipts of a franchise shall not exceed the amount specified in the ordinance granting the franchise.

(4) (a) A tax on the purchase of fuels taxable under Title 84, chapter 18, shall not exceed an amount equal to 2 cents for each gallon of fuel;

(b) The department of revenue shall provide for the administration and collection of the tax by rule.

(c) The proceeds shall be used for the construction, repair, and maintenance of all trafficways within the local government boundary or municipal limits which are neither state nor federal highways.

CHAPTER 9, PART 5

DEBT MANAGEMENT

47A-9-501. PURPOSE. It is the purpose of this chapter to implement Article VIII, sections 10 and 11 of the Montana constitution by establishing limits on local government debt and providing procedures for incurring debt and utilizing proceeds from bond sales.

47A-9-502. GENERAL DEFINITIONS. In this title, unless otherwise provided or the context requires a technical or other interpretation, the following definitions apply:

(1) "Bond" means an obligation of a local government for the payment of money in specified installments over a fixed period of time.

(2) "General obligation bond" means a bond which is secured by the full faith and credit of a local government pledged for the principal and interest.

(3) "Local improvement bond" means a bond which is payable solely from the proceeds of an assessment levied for a local improvement district.

(4) "Project" means any combination of the following:

(a) any construction, demolition, leasing acquisition, extraordinary maintenance, or repair;

(b) cost of the local government in the supervision and administration of the project;

(c) any legal work including eminent domain proceedings, preliminary studies, preparatory costs, surveying, planning, testing or design work, and project supervision and administration;

(d) any lands or rights in land to be acquired;

(e) any furnishings, machinery, apparatus, or equipment normally classified as capital items, but such items must have a useful life of 5 years or more if financed separately and not as a part of a construction project;

(f) the local government's share of the cost of a project undertaken jointly with one or more local governments, the state, or the federal government;

(g) the cost of damages caused by the construction of the improvement; and

(h) the cost of interest on bonds issued to finance the project.

(5) "Revenue bond" means a bond of a local government which is secured by the revenues of a project pledged to payment of the principal and interest on the bond.

(6) "Series" means all the bonds or notes to be sold and delivered at one time in respect to one project or to any two or more projects which have been combined for purposes of financing or where the bonds or notes have been combined for sale as provided in this title.

47A-9-503. CAPITAL IMPROVEMENT PROGRAM. (1) A local government may establish and amend by ordinance a capital improvement program which anticipates needed expenditures for acquisition or replacement of property, plant, or equipment which costs in excess of \$5,000 and has a life expectancy of 5 years or more.

(2) A capital improvement program may be financed by:

(a) allocating not more than 5% of each fund included in the capital improvement and replacement program to that fund's credit in the capital improvement program fund; and

(b) any other resources available to the local government.

(3) The ordinance establishing the capital improvement program shall state:

(a) the purposes for which the fund is created;

(b) the approximate periods of time during which the moneys are to be accumulated for each purpose;

(c) the approximate amounts to be accumulated for each purpose; and

(d) the sources from which moneys for each purpose will be derived.

(4) Appropriations from the capital improvement program fund shall be included in the annual budget.

47A-9-504. DEBT INCURRED WITHOUT A VOTE. A governing body by resolution may incur debts for capital acquisitions up to a total of \$40,000 for any service or function authorized by this title without submitting the question to the electors.

47A-9-505. INSTALLMENT PURCHASES. (1) When the amount to be paid on a contract for a capital acquisition exceeds \$5,000,

DRAFT

the governing body may provide for payment in installments extending over not more than 5 years.

(2) No installment contract may be entered into unless there is an unencumbered appropriation in the current fiscal year available and sufficient to pay the portion of the contract price that is payable during the current fiscal year; and the budget for each following year, in which any portion of the purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

(3) Installment contracts of more than 5 years may be entered into only if approved by a vote of the electors.

47A-9-506. DEPARTMENT OF COMMUNITY AFFAIRS - RULE MAKING, REPORTING AND TECHNICAL ASSISTANCE. (1) The department of community affairs shall by rule prescribe bond signature requirements, the manner of execution, and the form of bonds, bond authorizing ordinances, and notices.

(2) The department of community affairs shall review, prior to submission to the electors, all proposed local government bond issues, except for local improvement bonds, and may reject any proposed issue which would result in exceeding the local government's debt limit or which is technically deficient.

(3) The department of community affairs and the department of administration may provide a local government with technical advice and assistance on request in planning, preparing, presenting, and issuing any bond authorized by this title.

(4) All general obligation and revenue bond issues shall be submitted to the attorney general prior to sale as provided in 82-410 through 82-413.

(5) The governing body may retain private technical advice and assistance in planning, preparing, presenting, marketing, and issuing any bond authorized by this title.

(6) The governing body may designate one or more banks or trust companies in the United States as the fiscal agency for the local government for the payment of interest and principal on bonds issued by the local government.

47A-9-507. APPLICATION OF THIS TITLE TO PENDING AND OUTSTANDING BONDS. (1) Where prior to the enactment of this title proceedings for the issue and sale of bonds by any local government under its powers as set forth in the Revised Codes of Montana, 1947, have been commenced or completed in accordance with the provisions of the Revised Codes of Montana, 1947, the proceedings shall be held valid and sufficient and the completion

DRAFT

of the proceedings under the authority of this title is hereby authorized, and the proceedings when completed shall be of the same force and effect as if the provisions of this title had been in effect when the proceedings were commenced.

(2) Proceedings for the issue and sale of bonds by any local government commenced prior to the enactment of this title shall be completed under prior law, except that bonds authorized for sale prior to the enactment of this title may be sold in the manner provided in this title.

(3) All of the provisions of this title with reference to the payment of principal and interest of bonds, redemption and payment thereof, investment of debt service funds, levying of taxes for payment of principal and interest, maintenance of debt service funds, and all other provisions of this title which can be made applicable thereto shall apply to all bonds heretofore lawfully issued by any local government under any law or laws of this state, and which bonds shall be outstanding at the time this title takes effect.

47A-9-508. DEBT LIMITS. (1) No county may issue general obligation bonds which, with all outstanding general obligation bonds, will exceed 2 1/2% of the assessed value of property in the county, except that a county may issue additional general obligation bonds which, with all outstanding general obligation bonds, will not exceed 10% of the assessed value of property in the county for purposes of a county water distribution and supply system, sewage collection and treatment system, or a public transportation system. The additional debt may be utilized only to provide funds for the cost of capital facilities for any or all of the foregoing purposes.

(2) No municipality may issue general obligation bonds which, with all outstanding general obligation bonds, will exceed 5% of the assessed value of property in the municipality, except that a municipality may issue additional general obligation bonds which, with all outstanding general obligation bonds, will not exceed 15% of the assessed value of property in the municipality for purposes of a municipal water distribution and supply system, a sewage collection and treatment system, or a public transportation system. The additional debt may be utilized only to provide funds for the cost of capital facilities for any or all of the foregoing purposes.

(3) No consolidated government may issue general obligation bonds which, with all outstanding general obligation bonds, will exceed 7 1/2% of the assessed value of property in the consolidated government, except that a consolidated government may issue additional general obligation bonds which, with all outstanding general obligation bonds, will not exceed 10% of the assessed value of property in the consolidated government for purposes of a consolidated government water distribution and supply system, sewage collection and treatment system, or public transportation.

DRAFT

system. The additional debt may be utilized only to provide funds for the cost of capital facilities for any or all of the foregoing purposes.

(4) General obligation bonds issued for school purposes shall not be included as a part of a local government's outstanding general obligation bonds for purposes of determining whether or not the debt limit of the local government has been reached. The bonds shall be limited as provided in _____.

(5) The assessed value of property in a local government shall be ascertained by the last assessment for state and county taxes.

47A-9-509. GENERAL OBLIGATION BONDS. (1) A local government may, in the manner provided by this chapter, issue general obligation bonds to finance a project to provide any service or facility authorized by this title.

(2) General obligation bonds may be issued only after the electors have approved a bond authorization ordinance as provided in 47A-9-510.

(3) A bond authorization ordinance may be submitted to the electors either through the adoption of the ordinance by the governing body or by initiative of the electors.

(4) If the bond authorization ordinance is submitted to the electors by initiative, the governing body shall carry out all acts required to comply with 47A-9-510.

(5) General obligation bonds may not be issued for a term exceeding 20 years, except general obligation bonds for water, sewer, and storm sewer systems may be issued for a term not to exceed 40 years.

47A-9-510. ELECTION ON GENERAL OBLIGATION BOND. (1) A local government may issue general obligation bonds only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election.

(2) Whenever the question of issuing general obligation bonds is submitted to the electors of a local government, not less than 40% of the electors entitled to vote on the question must vote on the question, otherwise the proposition shall be rejected.

(3) The election shall be conducted as provided in 47A-3-514.

(4) An individual bond issue may not be placed before the voters more than one time in any fiscal year.

47A-9-511. TERMS OF SALE AND PAYMENT. (1) After approval of the bond authorizing ordinance by the qualified electors, the

DRAFT

governing body shall fix the date of issue, denominations, maturities, redemption terms, and registration privileges by resolution.

(2) The full faith and credit of the local government is pledged for the payment of principal and interest on general obligation bonds. The local government shall levy an ad valorem tax at a millage sufficient to pay the principal and interest which will fall due during the fiscal year and to establish reserves as necessary.

(3) General obligation bonds issued for acquiring, constructing, improving, and equipping a revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation.

47A-9-512. PERFORMANCE OF WORK. The governing body may perform the work specified in the bond authorizing ordinance in the improvement plan or may let the work to bid under the procedures of 47A-9-309.

47A-9-513. GENERAL OBLIGATION BONDS ISSUED WITHOUT A VOTE. A governing body may adopt a bond authorizing ordinance to issue general obligation bonds without submitting the question to the electors for the following purposes:

(1) for the purpose of enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line;

(2) for the purpose of funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the local government in a court of competent jurisdiction when there are not sufficient funds available to pay the judgment by an annual tax levy of 10 mills levied on all the taxable property within the local government through a period of 3 years. The ordinance providing for the issue of the bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement which may have been entered into between the governing body and the judgment creditor;

(3) for the purpose of funding, paying, and retiring outstanding warrants when there is not sufficient money in the accounts against which warrants are drawn to pay and retire the warrants, and the levying of taxes sufficient to pay and retire the warrants within a period of 3 years would, in the judgment of the governing body, work a hardship and be an undue burden on the taxpayers of the local government; and

(4) whenever the total indebtedness exceeds the debt limit, and the governing body finds and determines that the local government is unable to pay and discharge the indebtedness in full, the governing body shall have the power and authority to negotiate

DRAFT

with the holders of the bonds of the local government for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in full payment and satisfaction thereof and to enter into an agreement or agreements and to issue refunding bonds for the amount agreed upon. The plan agreed upon between the governing body and the bondholders shall be embodied in full in the ordinance providing for the issue of the bonds.

47A-9-514. REVENUE BONDS. (1) A local government may, in the manner provided by this title, issue revenue bonds to finance a project to provide any revenue producing service or facility authorized by this title.

(2) (a) No election is required to authorize the issue and sale of revenue bonds.

(b) A revenue bond authorizing ordinance may be submitted to the electorate by the governing body or by initiative or referendum.

(c) If the revenue bond authorizing ordinance is submitted to the electors, the election shall be conducted as provided in 47A-3-514, and approval by a majority of those voting on the question is required for adoption.

(d) An individual bond issue may not be placed before the voters more than one time in any fiscal year.

(3) Revenue bonds may not be issued for a term exceeding 40 years.

(4) The governing body shall authorize the issue of revenue bonds by ordinance which shall fix the date of issue, denominations, maturities, redemption terms, and registration privileges and which may include those of the following agreements as the governing body considers advisable:

(a) the purposes to which the proceeds of sale of the bonds may be applied and the use and disposition thereof;

(b) the use and disposition of the revenue of the undertaking for which the bonds are to be issued, including the creation and maintenance of reserves;

(c) the transfer from the general funds of the local government to the undertaking, an amount equal to the cost of furnishing the local government with the services, facilities, and commodities of the undertaking;

(d) the issuance of other or additional bonds payable from the revenue of the undertaking;

(e) the operation and maintenance of the undertaking;

DRAFT
DRAFT

(f) the insurance to be carried and the use and disposition of insurance moneys;

(g) financial records and their inspection and audit;

(h) the relative priority of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times;

(i) the terms and conditions upon which the bondholders or any proportion of them or any trustee shall be entitled to the appointment of a receiver by the district court; the district court shall have jurisdiction in the proceedings and may authorize the receiver to enter and take possession of the undertaking, operate and maintain it, prescribe rates, fees, or charges, subject to the approval of the public service commission, and collect, receive, and apply all revenue of the undertaking in the same manner as the local government itself might do.

(5) The provisions of this title and any ordinance or ordinances shall be enforceable by any bondholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

47A-9-515. PERFORMANCE OF WORK. The governing body may perform the work specified in the revenue bond authorizing ordinance or may let the work to bid under the procedures of 47A-9-309.

47A-9-516. PAYMENT ON REVENUE BONDS. (1) A local government which has issued revenue bonds to finance a revenue producing facility may use moneys received from the facility in the following manner:

(a) to pay when due all bonds and interest for the payment of which the revenue is pledged, charged, or otherwise encumbered;

(b) to provide for all costs of operation and maintenance of the undertaking;

(c) to pay and discharge notes, bonds, or other obligations and interest thereon for the payment of which the revenue of the undertaking is pledged, charged, or encumbered;

(d) to pay and discharge notes, bonds, or other obligations and interest thereon which do not constitute a lien, charge, or encumbrance on the revenue of the undertaking and which shall have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, or extension of the undertaking; and

(e) to provide for reserves.

(2) No local government may transfer the revenue of the undertaking to its general fund until adequate provision has been made for the foregoing purposes.

DRAFT

(3) No holder or holders of any revenue bonds shall ever have the right to compel any exercise of taxing power of a local government to pay revenue bonds or the interest thereon. However, nothing herein shall preclude the use of the local government's taxing power for the payment of principal or interest on revenue bonds.

47A-9-517. UNDERTAKINGS TO BE SELF-SUPPORTING. A governing body issuing revenue bonds pursuant to this title shall, subject to the approval of the public service commission where required, prescribe and collect reasonable charges for the services, facilities, and commodities of the undertaking and shall revise the rates, fees, or charges from time to time whenever necessary so that the undertaking shall be and always remain self-supporting. The charges prescribed shall produce revenue at least sufficient to:

(a) pay when due all bonds and interest thereon for the payment of which the revenue is pledged, charged, or otherwise encumbered, including reserves, and

(b) provide for all expenses of operation and maintenance of the undertaking, including reserves.

47A-9-518. LOCAL IMPROVEMENT BONDS. (1) The governing body may by ordinance authorize the issue and sale of local improvement bonds to pay all or part of the cost of an improvement in a local improvement district as authorized by an improvement plan. The principal and interest of bonds issued shall be payable from the levy of special assessments against the property to be benefited and other revenues appropriated by the governing body. Proceeds from the special assessments shall be credited to the debt service fund for the payment of principal and interest on the bonds.

(2) Local improvement bonds may not be issued for a term exceeding 20 years, except bonds for water, sewer, and storm sewer systems may be issued for a term not to exceed 40 years.

(3) (a) Before the governing body may issue local improvement bonds, it shall establish a local improvement revolving fund in order to secure prompt payment of principal and interest on any local improvement bond and appropriate to the account annually from the general fund or any other fund or by the levy of a tax as provided for in 47A-9-404 (e) a sum adequate to cover any anticipated deficiency in meeting payments of principal or interest on local improvement bonds by reason of nonpayment of special assessments when due. The governing body shall maintain the funds at an amount not exceeding 5% of the principal and interest on outstanding local improvement bonds.

(b) Should a local improvement district lack sufficient revenues to meet principal and interest payments due, the governing body by resolution shall loan to the desired fund a sum sufficient to meet principal and interest payments due from the local improvement district revolving fund at the interest rate that equals that of the outstanding bonds.

(c) Whenever a loan is made to any local improvement district from the revolving fund, the revolving fund shall have a lien on all unpaid special assessments and installments of special assessments of the district and all moneys thereafter coming into the district fund to the amount of the loan and interest from the time the loan was made.

(d) Whenever there are moneys in a district fund which are not required for bond or interest payments, a portion of the money as may be necessary to pay the loan shall be transferred to the revolving fund by resolution.

(e) Moneys received from an action taken against property for non-payment of a special assessment shall be credited to the local improvement district fund.

(f) Any remaining moneys in a local improvement fund after all outstanding bonds and interest are fully paid shall be transferred to the local improvement district revolving account by resolution.

(4) The local government may collect delinquent special assessments in the same manner as delinquent property taxes.

(5) Except for the purpose of funding the local improvement district revolving fund, no holder or holders of any local improvement district bonds shall have the right to compel any exercise of taxing power of a local government to pay the bonds or interest.

47A-9-519. REFUNDING BONDS. (1) If a local government has outstanding general obligation bonds and revenue bonds, and the governing body determines that it would be financially advantageous to refund the bonds, the governing body may provide for the issue of general obligation or revenue refunding bonds by ordinance.

(2) The refunding bonds may take up and refund all or any part of the outstanding bonds at or before their maturity or redemption date. The governing body may include various series and issues of bonds in a single issue of refunding bonds, except that revenue and general obligation bonds may not be combined in a single issue of refunding bonds.

(3) No refunding bonds shall be issued unless the refunding bonds shall bear interest at a rate of at least $1/2$ of 1% less than the interest rate of the outstanding bonds to be refunded.

(4) No election is required to authorize the issue and sale of refunding bonds. Refunding bond issues may be authorized and all proceedings with reference to them prescribed by ordinance of the governing body. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

DRAFT

(5) General obligation refunding bonds are payable according to 47A-9-511. Revenue refunding bonds are payable according to 47A-9-516.

(6) General obligation or revenue refunding bonds may, in the discretion of the governing body, be exchanged at par for the bonds being refunded or may be sold at public or private sale for an amount not less than par and accrued interest. They may be issued and delivered at any time before the date of maturity or redemption of the bonds being refunded.

(7) The issuing of bonds for refunding outstanding bonds is not the incurring of a new or additional indebtedness, but merely the changing of the evidences of outstanding indebtedness.

47A-9-520. BOND ANTICIPATION BORROWING. (1) A local government may borrow money in anticipation of the sale of general obligation bonds, revenue bonds, and local improvement district bonds if:

(a) the general obligation bonds to be sold have been authorized and ratified at a regular or special election;

(b) the revenue bonds to be sold have been authorized by ordinance; or

(c) the local improvement district bonds to be sold have been authorized.

(2) The governing body shall issue negotiable or non-negotiable notes for the amounts borrowed with a maturity date not to exceed 1 year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued, unless the bonds have not been sold by the maturity date of the notes.

(3) If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the governing body shall issue new notes in order to meet payment of the notes when maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed 1 year from the date of issue. Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than 3 years.

47A-9-521. REPAYMENT OF NOTES. (1) Every bond anticipation note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

(2) (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale

of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power, and resources of the local government. The local government may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.

(c) Notes issued in anticipation of the sale of local improvement district bonds and the interest on them are secured in the same manner as are local improvement district bonds in anticipation of which the notes are issued.

47A-9-522. LIMITATION. (1) The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

(2) The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

(3) Notes issued under this chapter shall be sold by the local government in the manner and at the price it determines at either public or private sale, but no note may be sold for less than par and accrued interest.

47A-9-523. CONDITIONS OF SALE AND MISCELLANEOUS PROVISIONS.

(1) The governing body shall give notice of the sale of bonds. The notice shall state:

(a) the type of bond to be sold;

(b) the purpose or purposes for the bond to be issued;

(c) the amount of the issue; and

(d) where and when bids for the purchase of the bonds will be accepted.

(2) The governing body shall consider the bids submitted and may reject any and all bids and sell the bonds at a private sale if they consider it to be in the best interest of the local government.

(3) No bond or note may bear an interest rate exceeding the contract usury rate of interest provided by law.

(4) A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

DRAFT

(5) All bonds and notes shall be payable as stated in the authorization or in the bond or note.

(6) Bonds shall be fully negotiable.

(7) The governing body may, in its discretion, provide that bonds may be issued and sold in two or more series or installments.

(8) If the authorized bonds have not been sold and issued within 3 years from the date of the bonding election and no vested rights have accrued thereunder, the governing body may rescind the authority to sell and issue the bonds by resolution wherein is recited the reason for the rescission of the authority.

(9) All local governments shall include as a condition of sale for any bond or note submission by the bidder of an indemnity bond as provided in 6-501.

(10) At least 15 days prior to the date set for sale, notice of the sale shall be mailed to the board of investments.

(11) After the sale, the bonds or notes may not be delivered to the purchaser until payment in full has been received for the bond or notes.

(12) Subsection (9) and (11) shall not apply to the board of investments as a bidder or purchaser.

47A-9-524. BOND REGISTER. (1) The finance administrator shall maintain a register of all bonds. The bond register shall show the number and amount of each bond, the date of issue, date redeemable, the date when the same will become due, the amount of all payments of both principal and interest required to be made on each bond with the dates when the same are required to be made, and the name and address of the purchaser.

(2) All payments on bonds and interest coupons and the date of payment shall be entered on the bond register.

(3) All bonds and interest coupons paid shall be canceled.

47A-9-525. LOST BONDS OR WARRANTS. (1) The finance administrator is authorized upon satisfactory proof that any original bond, warrant, or coupon has been lost or destroyed to issue to the owner or holder of the bond, warrant, or coupon a duplicate thereof which will take the place in order of registration and payment of the original bond, warrant, or coupon and in all cases supersede and take the place of the original.

(2) Before issuing the duplicate bond, warrant, or coupon, the governing body must require the person demanding the duplicate

DRAFT

to execute and deliver to the finance administrator a bond payable to the county in double the amount of the bond, warrant, or coupon with at least two good and sufficient sureties, which must be required to justify, as in the case of attachment, the conditions of the bond, being that the principal and sureties therein will indemnify and save harmless the local government from all loss, costs, or damages by reason of the issuing of the duplicate, and will pay to any person entitled to receive the duplicate bond, as the lawful holder of the original bond, warrant, or coupon, all moneys received upon the duplicate.

(3) The finance administrator, at the time of issuing any duplicate bond, warrant, or coupon, must write across or upon the face thereof the word "duplicate".

(4) The word "duplicate" upon any bond, warrant, or coupon imparts notice to all persons that the duplicate is issued subject to the provisions of this section.

(5) It is the duty of the finance administrator, upon the production to him of any original bond, warrant, or coupon by the lawful owner or holder thereof to assign by endorsement and to deliver to him the bond mentioned in this section and the owner or holder may maintain an action in his own name upon the bond for the recovery of any moneys paid upon the duplicate, but the delivery of the bond does not relieve or exonerate the local government from the payment of the amount specified therein upon a demand and refusal of the sureties names in the indemnifying bond to pay the same.

47A-9-526. VALIDITY OF BONDS. (1) Bonds bearing the signatures of officers in office on the date of signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment any or all the persons whose signatures appear thereon shall have ceased to be officers of the local government issuing the bonds.

(2) (a) Judicial review to determine the validity of the procedures whereby any bond issue is authorized may be had by petition of an interested party of 10 or more registered voters of the local government within 60 days after the bond authorization ordinance has been approved. The petitioner may in the court's discretion be awarded costs which may include reasonable attorney's fees.

(b) If no petition is filed within that period, compliance with all procedures required by this title and the validity of the manner in which the bond authorizing ordinance was approved shall be conclusively presumed. It shall be presumed that proper procedure was followed and all procedural requirements were met. The bond authorizing ordinance or bonds sold shall not be deemed invalid on account of any procedural error or omission unless it is shown that the error or omission materially and substantially affected such adoption.

(3) The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which the bonds are issued.

(4) The ordinances authorizing the bonds may provide that the bonds shall contain a recital that they are issued pursuant to this title, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

47A-9-527. LIABILITY OF MEMBERS OF GOVERNING BODY. (1) If the governing body shall fail, neglect, or refuse in any year to make a levy or special assessment sufficient to pay the interest on and principal of any issue or series of general obligation or local improvement district bonds, the holder of any bond of the issue or series, or any taxpayer paying taxes or special assessments on property situated in the jurisdiction, may apply to the district court for a writ of mandate to compel the governing body to make a proper and sufficient levy or special assessment for such purposes.

(2) If, upon the hearing of the application, it shall appear to the satisfaction of the court that the governing body has willfully failed, neglected, or refused to make any levy or special assessment whatever for such purposes, or has made a levy or special assessment but that the same is insufficient, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the governing body, at its next meeting for the purpose of making and fixing levies and special assessments, to raise the amount of the deficiency.

(3) The levy or special assessment shall be in addition to the levy or special assessment required to be made for the then current fiscal year.

(4) Any costs which may be allowed or awarded the petitioner shall be paid by the members of the governing body and shall not be a charge against the local government.

DRAFT

CHAPTER 9, PART 6

FISCAL EMERGENCIES

47A-9-601. PURPOSE. (1) It is the purpose of this chapter to preserve and protect the fiscal solvency of local governments in Montana through the improvement of local financial management and the avoidance of financial obligations that exceed the capacity of the local government.

*47A-9-602. LOCAL GOVERNMENT FISCAL EMERGENCIES. (1) In the event that a local government reaches its lawful limit for total indebtedness, the governing body may by ordinance provide for the management of its financial affairs on a cash basis.

(a) Necessary and reasonable current expenses may be paid in cash from the local government treasury and current revenues.

(b) Prior to the payment of current expenses, the governing body shall set apart sufficient moneys to pay the principal and interest due on outstanding bonded indebtedness and may levy the necessary property taxes for the payment of the principal and interest on outstanding indebtedness due during the fiscal year.

(c) Nothing in this title shall be construed to affect the right of any creditor of the local government to pursue any remedy now given him by law to obtain payment of his claim.

(2) The state of Montana does hereby consent that any local government may declare by ordinance:

(a) that it is insolvent or unable to meet its debts as they mature;

(b) that the local government desires to effect a plan for the composition of its debts under the provisions of the Federal Bankruptcy Act which pertain to local governments;

(c) that the local government may submit itself to the jurisdiction of the bankruptcy court;

(d) that the local government may comply with the orders and decrees of the bankruptcy court;

*[47A-9-602 is provided in alternative language. Only one of the sections will be recommended by the Commission on Local Government for presentation to the 1977 Legislature.]

DRAFT

(e) that the local government may issue bonds and other securities for the carrying out and consummation of its debts as required by the bankruptcy court; and

(f) that the state of Montana or any department or agency that is a creditor of a local government may have the same rights and privileges as any other creditor in the event of bankruptcy of the local government.

OR

47A-9-602. LOCAL GOVERNMENT FISCAL EMERGENCIES. (1) The department of community affairs, with the approval of the local government finance advisory council, may declare a financial emergency to exist in any local government upon determination that one or more of the following conditions have occurred:

(a) The local government fails to pay loans from banks or principal or interest due on notes or bonded debt in full within 28 days of the due date.

(b) The local government for a period of 28 days or more fails to transfer to the appropriate agency:

(i) taxes withheld on the income of employees; or

(ii) employer and employee contributions for federal social security or any pension, retirement, or benefit plan of an employee.

(c) The unit of local government fails for a period of 28 days to pay:

(i) wages and salaries owed to employees; or

(ii) pension and retirement benefits owed to former employees.

(2) The department of community affairs is authorized to take the following actions with respect to any local government in which a financial emergency has been declared:

(a) to make an analysis of all factors and circumstances contributing to the financial condition of the local government and to recommend steps to be taken to correct such conditions;

(b) to amend or revise or to approve or disapprove the budget of the local government and to limit the total amount of funds appropriated or expended during the balance of the fiscal period and during the period of financial emergency;

(c) to require and to approve or disapprove or to amend or revise a plan of liquidating current debt;

(d) to require and prescribe the form of special reports to be made by the finance administrator to the governing body, the creditors, the agency, or the public;

DRAFT

(e) to have access to all records and books of account and to require the attendance of witnesses and the production of books, papers, contracts, and other documents relevant to an analysis of the financial condition of the local government;

(f) to approve or disapprove any appropriation, contract, expenditure, loan, the creation of any new position, or the filling of any vacancy in a permanent position by the local government;

(g) to approve or disapprove payrolls or other claims against the local government prior to payment;

(h) to act as an agent of the local government in collective bargaining with employees or representatives and to approve any agreement prior to its becoming effective;

(i) to appoint a local administrator of finance to exercise the authority of the department of community affairs with respect to the local government and to perform duties under the general supervision of the department of community affairs;

(j) to employ or contract for, at the expense of the local government, such auditors and other personnel as may be necessary to carry out the provisions of this title;

(k) to require compliance with orders of the department of community affairs by court action if necessary; and

(l) to provide a temporary cash loan or the guarantee of a loan from private sources sufficient to the immediate needs of the city.

(3) The declaration of a local financial emergency in a local government shall be withdrawn and revoked if the local government completes one fiscal year in which none of the conditions enumerated in subsection (1) occurs.

(4) The department of community affairs shall represent the interests of the state and all local governments in any proceedings under the Federal Bankruptcy Act which pertain to the financial distress of any local government and is further authorized to perform any administrative or supervisory function requested by the court as part of, or pursuant to, such proceedings.

STATE COMMISSION ON LOCAL GOVERNMENT
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Helena, MT 59601

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